

**PROFESSIONAL CONSULTANT SERVICES AGREEMENT
MOVE MANAGEMENT CONSULTING SERVICES
Specification No. CS-2022-1336**

This PROFESSIONAL CONSULTANT SERVICES AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into as of the date fully executed below, by and between Orange County Sanitation District (hereinafter referred to as “OC San”) and CBRE, Inc. (hereinafter referred to as “Consultant”), and collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, OC San desires to obtain move management consulting services as described in Exhibit “A” attached hereto and incorporated herein by this reference (“Services”); and

WHEREAS, Consultant is qualified to provide the Services by virtue of experience, training, and expertise; and

WHEREAS, OC San desires to engage Consultant to render the Services as provided herein; and

WHEREAS, OC San selected Consultant to provide the Services in accordance with Ordinance No. OC SAN-56; and

WHEREAS, on December 14, 2022, OC San’s Administration Committee, by minute order, authorized execution of this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and benefits specified below, the Parties agree as follows:

1. General.

- 1.1 This Agreement and all exhibits hereto are made by OC San and the Consultant.
- 1.2 The following exhibits, in order of precedence, are incorporated by reference and made part of this Agreement.
 - Exhibit “A” – Scope of Work
 - Exhibit “B” – Proposal and Cost Proposal
 - Exhibit “C” – Determined Insurance Requirement Form
 - Exhibit “D” – Contractor 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 in the Agreement shall control and thereafter the provisions in the document highest in precedence shall be controlling.
- 1.4 Except as expressly provided otherwise, OC San accepts no liability for any expenses, losses, or actions incurred or undertaken by Consultant as a result of work performed in anticipation of purchases of the Services by OC San.
- 1.5 Work Hours: The work required under the Agreement may include normal business hours, evenings, and weekends.

- 1.6 Meetings with OC San staff: Meetings shall be scheduled Monday through Thursday, between the hours of 7:00 a.m. and 5:00 p.m., and Friday, between the hours of 7:00 a.m. and 3:30 p.m. OC San will not pay for travel time.
- 1.7 Days: Shall mean calendar days, unless otherwise noted.
- 1.8 OC San 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.
- 1.9 The provisions of this Agreement may be amended or waived only by an amendment executed by authorized representatives of both Parties.
- 1.10 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.

2. Scope of Work.

- 2.1 Consultant shall provide the Services identified in Exhibit "A" in a competent, professional, and satisfactory manner in accordance with generally accepted industry and professional standards, including fiduciary standards, ethical practices, and standards of care and competence for its trade/profession.
- 2.2 Modifications to Scope of Work. OC San shall have the right to modify the Scope of Work at any time. All modifications must be made by an amendment signed by both Parties. In the event that OC San materially modifies the Scope of Work, resulting in a material increase to the cost of performance of the Services and/or the Project Schedule, then the Parties shall enter into an amendment to the Agreement to provide for additional Consultant compensation and/or an extension of the Project Schedule for performance of the Services.
- 2.3 Familiarity with Work. By executing this Agreement, Consultant warrants that: (a) it has investigated the work to be performed; and (b) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Consultant discover any latent or unknown condition materially differing from those inherent in the work or as represented by OC San, it shall immediately inform OC San of this and shall not proceed, except at Consultant's risk, until written instructions are received from OC San.
- 2.4 Performance. Time is of the essence in the performance of the provisions hereof.

3. Agreement Term.

- 3.1 The Services shall be completed within five hundred sixty (560) calendar days from the effective date of the Notice to Proceed.
- 3.2 Extensions. The term of this Agreement may be extended only by an amendment signed by both Parties.

4. Compensation.

- 4.1 As compensation for the Services provided under this Agreement, OC San shall pay Consultant a total amount not to exceed One Hundred Eight Thousand, Three Hundred Ninety Dollars (\$108,390.00).

4.2 Consultant shall provide OC San with all required premiums and/or overtime work at no charge beyond the amount specified above. Such included premiums and/or overtime work do not apply to any increased Scope of Work or extended Project Schedule pursuant to Section 2.2.

5. Payments and Invoicing.

5.1 OC San shall pay itemized invoices for Milestones completed in accordance with Exhibit "A" at the prices identified in Exhibit "B" thirty (30) days from receipt of the invoice and after approval by OC San's Project Manager or designee. OC San shall be the determining party, in its sole discretion, as to whether the Services have been satisfactorily completed.

5.2 Consultant shall submit its invoices to OC San Accounts Payable by electronic mail to APStaff@OCSan.gov. In the subject line include "INVOICE" and the Purchase Order Number.

6. California Department of Industrial Relations Registration and Record of Wages.

6.1 To the extent Consultant's employees and/or its subconsultants perform work related to this Agreement for which Prevailing Wage Determinations have been issued by the California Department of Industrial Relations (DIR) as more specifically defined under Labor Code section 1720 et seq., prevailing wages are required to be paid for applicable work under this Agreement. It is Consultant's responsibility to interpret and implement any prevailing wage requirements and Consultant agrees to pay any penalty or civil damages resulting from a violation of the prevailing wage laws.

6.2 Consultant and its subconsultants shall comply with the registration requirements of Labor Code section 1725.5. Pursuant to Labor Code section 1771.4(a)(1), the work is subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR).

6.3 Pursuant to Labor Code section 1773.2, a copy of the prevailing rate of per diem wages is available upon request at OC San's principal office. The prevailing rate of per diem wages may also be found at the DIR website for prevailing wage determinations at <http://www.dir.ca.gov/DLSR/PWD>.

6.4 Consultant and its subconsultants shall comply with the job site notices posting requirements established by the Labor Commissioner per Title 8, California Code of Regulations section 16461(e). Pursuant to Labor Code sections 1773.2 and 1771.4(a)(2), Consultant shall post a copy of the prevailing rate of per diem wages at the job site.

6.5 Consultant and its subconsultants shall maintain accurate payroll records and shall comply with all the provisions of Labor Code section 1776. Consultant and its subconsultants shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4(a)(3). Pursuant to Labor Code section 1776, the Consultant and its subconsultants shall furnish a copy of all certified payroll records to OC San and/or the general public upon request, provided the public request is made through OC San, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement of the Department of Industrial Relations. Pursuant to Labor Code section 1776(h), penalties for non-compliance with a request for payroll records may be deducted from progress payments.

- 6.5.1 As a condition to receiving payments, Consultant agrees to present to OC San, along with any request for payment, all applicable and necessary certified payrolls and other required documents for the period covering such payment request. Pursuant to Title 8, California Code of Regulations section 16463, OC San shall withhold any portion of a payment, up to and including the entire payment amount, until certified payroll forms and any other required documents are properly submitted. In the event certified payroll forms do not comply with the requirements of Labor Code section 1776, OC San may continue to withhold sufficient funds to cover estimated wages and penalties under the Agreement.
- 6.6 The Consultant and its subconsultants shall comply with Labor Code section 1774 and section 1775. Pursuant to Labor Code section 1775, the Consultant and any of its subconsultants shall forfeit to OC San a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any work.
- 6.6.1 In addition to the penalty and pursuant to Labor Code section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant or its subconsultant.
- 6.7 Consultant and its subconsultants shall comply with Labor Code sections 1810 through 1815. Consultant and its subconsultants shall restrict working hours to eight (8) hours per day and forty (40) hours per week, except that work performed in excess of those limits shall be permitted upon compensation for all excess hours worked at not less than one and one-half (1.5) times the basic rate of pay, as provided in Labor Code section 1815. The Consultant shall forfeit, as a penalty to OC San, twenty-five dollars (\$25) per worker per calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of Labor Code sections 1810 through 1815.
- 6.8 Consultant and its subconsultants shall comply with Labor Code sections 1777.5, 1777.6, and 1777.7 concerning the employment of apprentices by Consultant or any subconsultant.
- 6.9 Consultant shall include, at a minimum, a copy of the following provisions in any contract it enters into with any subconsultant: Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.
- 6.10 Pursuant to Labor Code sections 1860 and 3700, the Consultant and its subconsultants will be required to secure the payment of compensation to employees. Pursuant to Labor Code section 1861, Consultant, by accepting this Agreement, certifies that:

“I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

Consultant shall ensure that all its contracts with its subconsultants provide the provision above.

7. **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 OC San. If OC San 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 OC San’s request. Consultant shall assign only competent personnel to perform Services under this Agreement.
8. **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 specifically and uniquely for OC San, but expressly excluding any Consultant Intellectual Capital (hereinafter defined), shall be the property of OC San and shall be promptly delivered to OC San upon request of OC San’s Project Manager or designee 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 OC San 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 OC San’s sole risk and without liability to Consultant. Consultant shall ensure that all its contracts with its subconsultants provide for assignment to OC San of any documents or materials prepared by them.
9. **Ownership of Intellectual Property.**
 - 9.1 Consultant agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions, and all other information and items made specifically and uniquely for OC San during the course of this Agreement and arising from the Services (hereinafter referred to as “New Developments”) shall be and are assigned to OC San as its sole and exclusive property.
 - 9.2 Consultant agrees to promptly disclose to OC San all such New Developments. Upon OC San’s request, Consultant agrees to assist OC San, at OC San’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 OC San shall deem necessary to apply for and to assign or convey to OC San, 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 regarding New Developments and confidential information.
 - 9.3 Consultant warrants that Consultant will have good title to any New Developments and the right to assign New Developments to OC San free of any proprietary rights of any other party or any other encumbrance whatever.
 - 9.4 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 specifically and uniquely for OC San by Consultant or its subconsultants in connection with the Services hereunder shall be delivered to

and shall become the exclusive property of OC San. OC San may utilize such documents, at its own risk, for OC San's applications on other projects or extensions of this project.

9.5 Consultant shall not receive any right, claim, title or interest in or to any proprietary products or intellectual property of OC San. Notwithstanding any provision hereof to the contrary, all methodologies, systems, procedures, management tools, software, ideas, inventions, know-how and other intellectual capital that Consultant has developed, created or acquired prior to performing Services under this Agreement, or develops, creates or acquires during the Agreement Term or thereafter ("Consultant Intellectual Capital") are and shall remain the sole and exclusive proprietary property of Consultant, and OC San shall not have any right, claim, title or interest in or to any of Consultant Intellectual Capital.

10. Right to Review Services, Facilities, and Records.

10.1 OC San 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 in such endeavor.

10.2 Consultant shall furnish to OC San such reports, statistical data, and other information pertaining to Consultant's Services as shall be reasonably required by OC San 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.

10.3 The right of OC San 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.

11. Conflict of Interest and Reporting.

11.1 Consultant shall, at all times, avoid conflicts of interest or appearance of conflicts of interest in performance of this Agreement.

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

12. Damage to OC San's Property. Any of OC San's property damaged by Consultant, any subconsultant, subcontractor, or by the personnel of either will be subject to repair or replacement by Consultant at no cost to OC San.

13. 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.

14. Audit Rights. Consultant agrees that, during the term of this Agreement and for a period of three (3) years after its expiration or termination, OC San 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.

15. **Contractor Safety Standards and Human Resources Policies.** OC San requires Consultant, its subconsultants, and its subcontractors to follow and ensure their employees follow all Federal, State, and local regulations as well as Contractor Safety Standards while working at OC San locations. If, during the course of the Agreement, it is discovered that Contractor Safety Standards do not comply with Federal, State, or local regulations, the Consultant is required to follow the most stringent regulatory requirement at no additional cost to OC San. Consultant, its subconsultants, and all of their employees shall adhere to all applicable Contractor Safety Standards in Exhibit “D” and the Human Resources Policies in Exhibit “E.”
16. **Insurance.** Consultant and all its subconsultants shall purchase and maintain, throughout the term of this Agreement and any periods of warranty or extensions, insurance in amounts equal to the requirements set forth in the signed Exhibit “C” – Determined Insurance Requirement Form. Consultant shall not commence work under this Agreement until all required insurance is obtained in a form acceptable to OC San, 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 obtain and maintain the required insurance coverage shall result in termination of this Agreement.
17. **Indemnification and Hold Harmless Provision.**
- 17.1 To the extent of Consultant’s fault, Consultant shall assume all responsibility for damages to property and/or injuries to persons, including accidental death, which may arise out of or may 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 negligence of or willful misconduct of the other Party, each Party (as the case may be, the “Indemnifying Party”) shall indemnify, protect, defend, and hold harmless the other Party, and its officials, officers, agents, and employees from and against any and all third party claims, liabilities, damages, or expenses of any nature, including attorneys’ fees: (a) on account of any goods and services provided under this Agreement that result in injury to or death of any person, or damage to property, or interference with the use of property to the extent arising out of or in connection with the negligence or willful misconduct of the Indemnifying Party. 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 OC San, and with well qualified, adequately insured, and experienced legal counsel acceptable to OC San. This section shall survive the expiration or early termination of the Agreement.
- 17.2 Notwithstanding any provision herein to the contrary:
- 17.2.1 Neither Party shall be liable for any lost or prospective profits or any other indirect, consequential, special, incidental, punitive, or other exemplary losses or damages, whether based in contract, warranty, indemnity, negligence, strict liability or other tort or otherwise, regardless of the foreseeability or the cause thereof.

17.2.2 Consultant's maximum aggregate liability under or in connection with this Agreement, regardless of the form of action, shall in no event exceed three (3) times the total compensation (excluding any reimbursed amounts) received by Consultant under this Agreement. Consultant shall not be liable for any claim based upon or resulting from any erroneous or incomplete data provided by OC San or any third party or otherwise contained in OC San's databases.

18. Independent Contractor.

18.1 The relationship between the Parties hereto is that of an independent contractor and nothing herein shall be construed as creating an employment or agency relationship.

18.2 During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as OC San's officers, employees, or agents. OC San assumes no liability for Consultant's action and performance nor assumes responsibility for taxes, funds, payments, or other commitments, expressed or implied, by or for Consultant.

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

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

18.5 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 OC San for any claims, losses, costs, fees, liabilities, damages, or penalties suffered by OC San arising out of Consultant's breach of this provision.

18.6 Consultant shall not be eligible to join or participate in any benefit plans offered to those individuals listed on OC San'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 OC San misclassified Consultant for tax purposes.

19. Subcontracting and Assignment. Consultant shall not delegate any duties nor assign any rights under this Agreement without the prior written consent of OC San. Any such attempted delegation or assignment shall be void.

20. No Solicitation of Employees.

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

20.2 Consultant acknowledges that OC San's employees are critical to its business and OC San expends significant resources to hire, employ, and train employees. Should Consultant employ or otherwise engage OC San's employees during the term of this Agreement and for a period of one (1) year following expiration or termination of this Agreement, Consultant shall pay OC San fifty percent (50%) of the former employee's most recent annual salary earned at OC San to accurately reflect the reasonable value of OC San's time and costs. This payment is in addition to any other rights and remedies OC San may have at law.

21. Confidentiality and Non-Disclosure.

21.1 Each Party acknowledges that, in performing the Services hereunder, the other Party may have to disclose to the other, orally and in writing, certain confidential information that it considers proprietary and has developed at great expense and effort.

21.2 Except where disclosure is required by law, both Parties agree to maintain in confidence and not disclose to any person, firm, or corporation, without the other Party's prior written consent, any trade secret, confidential information, knowledge, or data relating to the products, process, or operation the other Party.

21.3 Except where disclosure is required by law, both Parties further agree to maintain in confidence and not to disclose to any person, firm, or corporation any data, information, technology, or material developed or obtained by the other Party during the term of this Agreement.

21.4 Both Parties agree as follows:

21.4.1 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.

21.4.2 To restrict access to the confidential information to its subconsultant or personnel of either Party 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.

21.4.3 To return all confidential information upon termination of this Agreement or upon the other Party's request, whichever occurs first.

21.4.4 To hold in confidence information and materials, if any, developed pursuant to the Services hereunder.

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

22. Non-Liability of OC San Officers and Employees. No officer or employee of OC San shall be personally liable to Consultant, or any successor-in-interest, in the event of any default or breach by OC San or for any amount which may become due to Consultant or to its successor, or for breach of any obligation under the terms of this Agreement.

23. Third-Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OC San and Consultant.

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 OC San harmless from any and all damages and liabilities assessed against OC San as a result of Consultant's noncompliance therewith. Any provision required by law to be included herein shall be deemed included as a part of this Agreement whether or not specifically included or referenced.
25. **Licenses, Permits, Ordinances, and Regulations.** Consultant represents and warrants to OC San that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to provide the Services. Any and all fees required by Federal, State, County, City, and/or municipal laws, codes, and/or tariffs that pertain to the work performed under this Agreement will be paid by Consultant.
26. **Regulatory Requirements.** Consultant shall perform all work under this Agreement in strict conformance with applicable Federal, State, and local regulatory requirements including, but not limited to, 40 CFR 122, 123, 124, 257, 258, 260, 261, and 503, Title 22, 23, and Water Codes Division 2.
27. **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 subconsultants, subcontractors, and the Services, including, but not limited to, all applicable Federal, State, and local air pollution control laws and regulations. OC San acknowledges that Consultant is not an environmental expert or consultant in the field of Hazardous Materials (as hereinafter defined). With respect to any Hazardous Materials that may be present below, on, about or otherwise affecting the real property or any property of OC San, Consultant shall not be responsible for detecting, handling, removing, remediating or disposing of such Hazardous Materials, except to the extent of any Hazardous Materials brought onto the property by Consultant ("Consultant Hazardous Materials"). Consultant shall not use Hazardous Materials except in the ordinary course of providing the Services and in compliance with applicable laws. "Hazardous Materials" shall mean any hazardous material or substance which is or becomes defined as a "hazardous waste," "hazardous substance," "hazardous material," pollutant, or contaminant under any applicable law. Consultant shall not be responsible for detecting or remediating (i) any pre-existing conditions at the project site or other property of OC San or (ii) any structural or latent defects or other defects in design or construction of a facility or manufacturing defects in equipment at the property, whether pre-existing or arising during the Agreement Term.
28. **Dispute Resolution.**
- 28.1 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.
- 28.2 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 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 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.

- 29. Remedies.** In addition to other remedies available in law or equity, if the Consultant fails to make delivery of the goods or Services or repudiates its obligations under this Agreement, or if OC San rejects the goods or Services or revokes acceptance of the goods or Services, OC San may (a) cancel the Agreement; (b) recover whatever amount of the purchase price OC San has paid, and/or (c) "cover" by purchasing, or contracting to purchase, substitute goods or services for those due from Consultant. In the event OC San elects to "cover" as described in (c), OC San shall be entitled to recover from Consultant as damages the difference between the cost of the substitute goods or services and the Agreement price, together with any incidental damages.
- 30. 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 the affected 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 of the Parties.
- 31. Termination.**
- 31.1 OC San 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 OC San. Upon receipt of a termination notice, Consultant shall immediately discontinue all work under this Agreement (unless the notice directs otherwise). OC San shall thereafter, within thirty (30) days, pay Consultant for work performed (cost and fee) through 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 OC San from any further fee, cost, or claim hereunder by Consultant other than for work performed through the date of termination.
- 31.2 OC San reserves the right to terminate this Agreement immediately upon OC San's determination that Consultant is not complying with the Scope of Work requirements, if the level of service is inadequate, or for any other default of this Agreement.
- 31.3 OC San may also immediately terminate this Agreement for default, 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 the total amount of compensation exceeds the amount authorized under this Agreement.
- 31.4 All OC San's property in the possession or control of Consultant shall be returned by Consultant to OC San on demand or at the expiration or termination of this Agreement, whichever occurs first.

32. **Attorney's Fees.** If any action at law or in equity 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 the prevailing party may be entitled.
33. **Waiver.** The waiver by 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 OC San does not object shall not operate as a waiver of OC San's rights to seek remedies available to it for any subsequent breach.
34. **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.
35. **Survival.** The provisions of this Agreement dealing with payment, warranty, indemnity, and forum for enforcement shall survive expiration or early termination of this Agreement.
36. **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 the County of Orange in the event any action is brought in connection with this Agreement or the performance thereof.
37. **Notices.**
37.1 All notices under this Agreement must be in writing. Written notice shall be delivered by personal service, by electronic telecommunication, 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. Rejection or other refusal to accept or the inability to deliver because of changed address for 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:

OC San: Jessica Vu
Buyer
Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708
JVu@ocsan.gov

Consultant: Eric H. Stang
Senior Managing Director
CBRE, Inc.
2000 Town Center, Suite 2200
Southfield, MI 48075
Eric.Stang@CBRE.com

37.2 Each party shall provide the other party written notice of any change in address as soon as practicable.

38. **Read and Understood.** By signing this Agreement, Consultant represents that it has read and understood the terms and conditions of the Agreement.
39. **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.
40. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties and supersedes all prior written or oral communications and all contemporaneous oral agreements, understandings, and negotiations between the Parties with respect to the subject matter hereof.

[Intentionally left blank. Signatures follow on the next page.]

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives.

ORANGE COUNTY SANITATION DISTRICT

Dated: _____

By: _____
Chad P. Wanke
Board Chairman

Dated: _____

By: _____
Kelly A. Lore
Clerk of the Board

Dated: _____

By: _____
Ruth Zintzun
Purchasing & Contracts Manager

CBRE, INC.

Dated: _____

By: _____

Print Name and Title of Officer

CMM