

**TEMPORARY, NON-EXCLUSIVE AND REVOCABLE LICENSE AGREEMENT  
BETWEEN THE ORANGE COUNTY SANITATION DISTRICT  
AND THE CITY OF NEWPORT BEACH  
FOR USE OF ORANGE COUNTY SANITATION DISTRICT PROPERTY**

**THIS TEMPORARY, NON-EXCLUSIVE AND REVOCABLE LICENSE AGREEMENT FOR USE OF ORANGE COUNTY SANITATION DISTRICT PROPERTY (“Agreement”)** is made and entered into as of this 1<sup>st</sup> day of June 2024 (“**Effective Date**”), by and between the **ORANGE COUNTY SANITATION DISTRICT**, a California public body (“**OC San**” and “**Licensor**”), and the **CITY OF NEWPORT BEACH**, a California municipal corporation and charter City (“**City**” and “**Licensee**”). City and OC San are individually referred to as “Party” and collectively as “Parties” herein.

**RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. OC San is the owner of real property located at 22212 Brookhurst St, Huntington Beach, CA 92646, commonly known as Plant No. 2 (“**OC San Property**”).
- C. The City desires to use, on a temporary basis, and OC San is willing to grant a temporary License (as defined in Section 1.1 below) for the City to use, under the terms, covenants and conditions set forth in this Agreement, an approximately eighteen thousand five hundred (18,500) square foot portion of the OC San Property located (unless relocated as described hereinbelow) within the northerly area of the OC Property as approximately depicted on **Exhibit “A”** attached hereto and incorporated herein by reference (“**License Area**”) as a construction staging area to support projects performed by, or on behalf of, the City (collectively, the “**City Projects**”).
- D. OC San and Licensee desire to enter into this Agreement for Licensee to utilize the License Area as a staging area related to the City Projects, subject to the terms, covenants and conditions set forth in this Agreement.

**NOW, THEREFORE**, for the amount of \$10.00 and other consideration, the sufficiency of which is hereby acknowledged by the parties hereto, it is mutually agreed by and between the undersigned parties as follows:

**1. LICENSE**

1.1 OC San hereby grants a temporary, non-exclusive and revocable license (“**License**”) to Licensee for the term of this Agreement as set forth in Section 4 below for use as a temporary construction staging site exclusively for City Projects within the License Area.

1.2 In the event OC San shall need or desire to change or modify the location of the License Area within the OC San Property, Licensee shall, within thirty (30) calendar days of OC San's delivery to Licensee of prior written notice of such change or modification (the "**Relocation Notice**"), relocate its equipment and materials to a new or modified location within the OC San Property, which relocation shall occur as directed by OC San to the area generally depicted on an aerial exhibit included with the Relocation Notice and such area will thereafter be considered as the License Area, which thereafter will be subject to all of the terms, covenants and conditions provided under this Agreement. Notwithstanding any new, relocated or modified License Area, the initial or former License Area occupied by Licensee shall continue to remain subject to Sections 16 and 20 as set forth therein, which provisions will survive the expiration or earlier termination of this Agreement. Licensee acknowledges and agrees that (i) OC San may relocate Licensee, in OC San's sole and absolute discretion, and (ii) the cost of such relocation and reinstallation of the fencing, screening and Gate required under Section 7.2.5 shall be borne solely by Licensee with no cost or impact to OC San or Licensee's obligations under this Agreement whatsoever.

1.3 The License granted herein is subject to the terms, covenants and conditions hereinafter set forth, and Licensee covenants, as a material part of the consideration for this License, to keep and perform each and every term, covenant and condition of this Agreement.

## **2. PURPOSE OF THIS AGREEMENT**

The purpose of this Agreement is to provide Licensee with temporary, non-exclusive use of the License Area as a temporary staging area and storage site for equipment, materials and soils, and for parking, to facilitate Licensee's work necessary for the City Projects. Licensee shall use the License Area only for the activities described herein and shall not use or permit the use of the License Area for any other purpose without first obtaining the prior written consent of OC San, which consent may be withheld in OC San's sole discretion.

## **3. PERMITS, LICENSES AND BEST PRACTICES**

3.1 Licensee, at its sole expense, shall obtain and maintain during the Term (as defined in Section 4 below) of this Agreement, all appropriate permits, licenses and certificates that may be required by any governmental agency, including OC San, in order to use the License Area as a temporary construction staging and storage site for equipment and materials, and for parking.

3.2 Licensee shall have in effect a Stormwater Pollution Control Plan ("**SWPCP**") and Best Management Practices plan ("**BMPs**") accepted by Licensee and its employees ("**Licensee's In-House Representatives**") and Licensee's contractors and subcontractors ("**Licensee's Contracted Representatives**") (and together, Licensee's In-House Representatives and Licensee's Contracted Representatives are collectively referred to herein as "**Licensee's Representatives**") to ensure all activities on, within or about the License Area are in compliance with industry standards best practices,

including, but not limited to description of activities that could cause pollution, control measures for preventing spills and minimizing hazards, a spill response plan, procedures for conducting inspections and monitoring, and provisions for sufficient training of Licensee's representatives.

3.3 Licensee shall establish, maintain and uphold business practices to the highest degree as generally recognized in Licensee's industry, and exercise the utmost caution for the protection and safety of Licensee and the general public at all times during the term of this Agreement.

#### **4. TERM**

This Agreement shall commence upon the Effective Date and terminate upon (i) the completion of the City Projects, or (ii) December 31, 2028, whichever occurs first ("**Term**"), unless OC San terminates the License in accordance with Section 15.2 or Section 15.3 below prior to the expiration of such Term. Both Parties understand and agree that this Agreement is for a temporary period of time and does not, and will not, result in permanent use of, or access to, the License Area by Licensee.

#### **5. LICENSE FEE**

The License is provided by OC San to Licensee at no charge. OC San is not charging Licensee a fee comparable to the open market or appraised value of the License Area because OC San finds that Licensee's use of the License Area for the purpose of completing public City Projects to be a service to the community.

#### **6. UTILITIES**

6.1 Licensee acknowledges and agrees that (i) Licensee shall not need or require the usage of any utilities within the License Area, and (ii) OC San will not be obligated to provide any utilities to or within the License Area or any access to utilities.

#### **7. USE AND CONDITIONS OF THE LICENSE AREA**

##### 7.1 General Use and Conditions.

7.1.1 Licensee understands the safety of the public is paramount to the uses and conditions set forth herein under this Section 7 for the License Area. Licensee shall maintain the License Area free from waste, debris, hazards or risks to public health, safety or welfare at all times.

7.1.2 Licensee shall not use or permit the use of the License Area for any unlawful purpose.

7.1.3 Licensee shall not commit or permit the commission of any noise or nuisance on the License Area and shall comply with any and all noise and nuisance requirements as defined by any applicable federal, state and local laws and regulations.

7.1.4 Use of any area on, within or about the OC San Property and outside the License Area (other than for purposes of accessing the License Area as permitted by OC San) is strictly prohibited without prior written approval from OC San. Weekday access (5 AM to 3 PM, subject to change by OC San) shall be through the gate that is just north of Banning Avenue, as depicted on **Exhibit "A"** (the "**Banning Gate**"), which will have a security guard employed or contracted by OC San during such hours. Access to the License Area by Licensee or Licensee's Representatives outside of these hours may be obtained through OC San's representative located at the Plant No. 2 main gate upon Licensee's delivery to OC San of a 48 hour advance written notice in form provided on **Exhibit "C"** attached hereto and made a part hereof, ("**Main Gate Access Request**") which shall be sent electronically as set forth in the Main Gate Access Request and OC San's written consent to such access request, which consent may be sent in a response to the requesting email and shall be timely granted or denied in OC San's sole but reasonable judgment.

7.1.5 Except as provided under this Agreement, Licensee shall not make or permit to be made any alterations, additions or improvements to the License Area, or install lighting or equipment, or install any signs, lettering or advertising media of any type or any other visual displays, on or about the License Area without the prior written consent of OC San. Notwithstanding the foregoing, Licensee shall place all required construction notices and warning signs on or about the License Area in the manner required by OC San or Federal, State or local law.

7.1.6 Licensee shall protect the integrity of the License Area and any part of the OC San Property used for the purposes of accessing the License Area ("**Access Areas**"). Licensee shall prevent any oil, cement or other material spills at the driveway entering the Banning Gate or any other access point onto the OC San Property, the Access Areas and any other area on or about the License Area and Access Areas. Licensee shall return the License Area and Access Areas used by Licensee or Licensee's Representatives to OC San in the condition that existed as of the Effective Date of this Agreement (or otherwise to a condition satisfactory to and approved in writing by OC San), ordinary wear and tear excepted. Licensee shall, at its sole cost and expense, document (including photos and/or video) the condition of the License Area and Access Areas existing as of the Effective Date (or date of relocation, if applicable) and submit such documentation to OC San within five (5) business days of (i) the Effective Date, or (ii) the date of relocation (as set forth under Section 14 below), as applicable.

7.1.7 Licensee shall exercise all necessary precautions for opening, closing, and securing the License Area and its equipment and materials stored in the License Area at all times. Licensee expressly assumes all responsibility for the protection and security of the License Area, including personal property and equipment of Licensee.

7.1.8 Licensee shall install legible signs on the License Area that includes Licensee's contact information, including a 24-hour emergency phone number.

## 7.2 Special Use and Conditions.

7.2.1 Licensee shall maintain the smallest footprint on the OC San Property as absolutely required by the scope of the City Projects at any given time during the phases of construction, and Licensee shall use its best efforts to reduce its impact to the OC San Property by using the fewest truck and vehicle trips, and by storing on the License Area the least amount of equipment and materials as necessary for the immediate needs of the City Projects. Licensee shall use its best efforts to complete the City Projects on time or ahead of schedule and discontinue its use of the License Area and Access Areas within the OC San Property as soon as possible.

7.2.2 Licensee may use the License Area for the temporary storage of construction vehicles, equipment and materials. Any temporary stockpiling of materials is prohibited unless such materials are stored on raised mobile platforms, pallets or other protective barriers to prevent spills or spread of materials.

7.2.3 Licensee's Representatives (defined in Section 3) shall have the right to park personal vehicles within the License Area provided that Licensee delivers the name(s) of any such representative to OC San, prior to such representative parking his or her vehicle within the License Area, and Licensee shall ensure that the Gate (as defined in Section 7.2.5 below) to the License Area for access to such vehicles is closed and locked. Licensee shall not park any vehicles outside the License Area.

7.2.4 Licensee is strictly prohibited from bringing any soil or dredged materials from the City Projects on to the License Area or any other portion of the OC San Property. Such soil or dredged material shall not be stored, nor brought on site even temporarily, nor in transport to a secondary site.

7.2.5 Licensee, at Licensee's sole cost and expense, shall cause the License Area to be fenced and screened on all sides commencing no later than thirty (30) calendar days after the Effective Date of this Agreement (or thirty (30) calendar days after the effective date of any relocation as provided under Section 14 below) and continuing until the expiration or earlier termination of this Agreement. Licensee shall not bring any equipment or personnel or use the License Area until and unless the License Area is fully fenced and screened. The height of fence shall be at least six (6) feet, and fence material shall be chain link metal fence overlaid on the exterior with an opaque vinyl screen, or other equivalent fencing and screening material as approved in writing by OC San. The fencing shall include the installation of a locking gate (the "**Gate**") which swings to the interior of the License Area to provide access to the License Area. Licensee shall place warning signs on or about the License Area in any manner required by federal, state or local law.

7.3 Other Users of Property. The License Area is a portion of the OC San Property specifically designated for use by Licensee for the operations permitted herein. Certain other portions of the OC San Property are also shared with other tenants or licensees of OC San, and consideration shall be given by Licensee to these other tenants and licensees so as not to impede the operation of their respectively designated uses of the OC San Property.

## **8. OC SAN INSPECTION**

8.1 OC San shall be entitled, at any time, to inspect the License Area for compliance with the terms of this Agreement, and with all applicable federal, state and local laws and regulations.

8.2 OC San and its authorized OC San representative(s) may, without prior notice to Licensee, enter upon and inspect the License Area for any lawful purpose, provided that OC San shall use commercially reasonable efforts to not interfere with Licensee's operation and/or use of the License Area in performing any such entry, inspection, and/or shared use of the License Area. In case of emergency, OC San or its authorized OC San representative(s) may enter the License Area by whatever force reasonably necessary if Licensee is not present to open and permit entry. Any entry to the License Area by OC San under this License shall not be construed as a forcible or unlawful entry into, or a detainer of, the License Area, or an eviction of Licensee from the License Area or any portion thereof.

## **9. EMERGENCY**

9.1 Licensee understands the License Area is located on public property and emergency situations may develop from time-to-time that require access to the Property to be immediately stopped and thereby interfere or temporarily terminate Licensee's use of the License Area. Licensee agrees that, if such a situation occurs, OC San shall have the right to immediately restrict access to the License Area and any equipment or materials located on the License Area for the duration of the emergency. Licensee agrees not to hold OC San responsible or liable for and shall protect, defend, indemnify and hold OC San harmless for any damage, loss, claim or liability of any nature suffered as a result of the loss of the use of the License Area.

9.2 Unless otherwise specifically provided in a notice of termination of this Agreement, OC San's exercise of the right to restrict access to the License Area is not intended to constitute a termination of this Agreement by either Party and such event is a risk accepted by Licensee. Licensee and OC San shall meet after OC San determines that an emergency has ended to establish the time and manner in which access shall be restored. OC San shall have the right to reasonably determine what constitutes an "**emergency situation**" pursuant to this Section.

## **10. MAINTENANCE**

At its sole cost and expense, Licensee shall take good care of and keep the License Area neat and clean at all times. Should Licensee fail to commence required

maintenance or repairs, or cleaning of the License Area (or Access Areas utilized by Licensee or Licensee's Representatives) to a condition satisfactory to OC San, within twenty-four (24) hours after receipt of written notice to do so, OC San may perform such work or have such work performed by others and Licensee shall immediately reimburse OC San for all direct and indirect costs associated with such work upon receipt of an invoice for such costs.

#### **11. NO INTEREST IN THE OC SAN PROPERTY**

Nothing herein shall be deemed to create a lease, or easement of any property right, or to grant any possessory or other interest in the License Area, the OC San Property, or any public right-of-way, other than a license to use and access the License Area, revocable and for a temporary term as set forth in this Agreement.

#### **12. RESERVATION OF RIGHTS**

Licensee understands, acknowledges and agrees that any and all authorizations granted to Licensee under this Agreement are non-exclusive and shall remain subject to all prior and continuing regulatory and propriety rights and powers of OC San to regulate, govern and use the License Area and the OC San Property, as well as any existing encumbrances, deeds, covenants, restrictions, easements, dedications and other claims of title that may affect the License Area and the OC San Property.

#### **13. OC SAN RETENTION RIGHTS**

Licensee's right to use the License Area during the term of this Agreement shall be subordinate and junior to the rights of OC San to use and occupy the License Area and the OC San Property for any purpose.

#### **14. RELOCATION**

OC San reserves the right to change the boundaries of the License Area or its location within the OC San Property, in which case Licensee shall (i) relocate its equipment and materials to the new boundaries or location of the License Area, and (ii) re-install the fencing, screening and Gate required under Section 7.2.5 at Licensee's sole cost and expense and without making any claim against OC San for reimbursement or damage therefor.

Except in the event of an emergency or other situation requiring immediate relocation from the License Area, OC San shall provide Licensee with not less than thirty (30) calendar days written notice of relocation specifying the location of the new License Area and the outside date by which the relocation must take place.

#### **15. TERMINATION**

15.1 Except as otherwise provided in this Agreement or in accordance with this Section, OC San shall not terminate this Agreement or the License prior to the end of the Term set forth in this Agreement.



15.2 OC San may terminate this Agreement, at its discretion with no reason of default, upon providing no less than one hundred eighty (180) calendar days prior written notice to Licensee.

15.3 OC San may terminate this Agreement upon Licensee's failure to cure or correct a default of any term or condition of this License within ten (10) business days of Licensee's receipt of written notice of such default. The written notice shall describe the subject default in reasonable detail.

## **16. SURRENDER**

Upon the expiration or earlier termination of this Agreement, Licensee, at its sole cost and expense, shall, within fifteen (15) calendar days thereof, remove all of its equipment and stored materials, restore the License Area and Access Areas utilized by Licensee or Licensee's Representatives to the condition that existed as of the Effective Date of this Agreement or the effective date of any relocation (or otherwise to a condition satisfactory to and approved in writing by OC San), ordinary wear and tear excepted, and vacate the License Area. Restoration may include, but is not limited to, removing any and all debris, waste or other material. Should Licensee fail to restore the License Area and/or Access Areas to a condition satisfactory to OC San, OC San may perform such work or have such work performed by others and Licensee shall immediately reimburse OC San for all direct and indirect costs associated with such work upon receipt of an invoice for such costs.

## **17. ADMINISTRATION**

This License will be administered by the OC San Finance Department. The Director of Finance or its designee shall be the License Administrator and shall have the authority to act for OC San under this License. The License Administrator or its authorized representative shall represent OC San in all matters pertaining to this License.

## **18. INDEMNIFICATION AND LIABILITY FOR DAMAGES**

18.1 Irrespective of any insurance carried by Licensee for the benefit of OC San, and to the fullest extent permitted by law, Licensee shall indemnify, defend, assume all responsibility for, and hold harmless OC San, its elected or appointed officers, agents, officials, employees, and volunteers (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "Claim" and, collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to Licensee's operations conducted under this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death, which may be caused by any of Licensee's activities under this Agreement, whether such activities or performance thereof be (i) by Licensee, or (ii) Licensee's Representatives or any other Licensee's permittees or agents and



whether such damage shall accrue or be discovered before or after termination of this Agreement.

18.2 Notwithstanding the foregoing, nothing herein shall be construed to require Licensee to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties or by OC San's failure to comply with the terms, covenants and conditions of this Agreement. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee.

18.3 Licensee shall be liable and responsible for the security, repair and maintenance of the License Area and Access Areas to the extent necessitated by Licensee's use of the License Area and such Access Areas, for such time as this License is in effect. Licensee shall use care to protect the License Area when not in use by Licensee.

18.4 OC San shall indemnify, defend, assume all responsibility for, and hold harmless Licensee, its elected or appointed officers, agents, officials, employees, and volunteers from and against any and all Claims which may arise from or in any manner relate (directly or indirectly) to the operations or activities conducted in, on, or over the License Area by OC San or its elected or appointed officers, agents, officials, employees, and volunteers, and for any damages to property or injuries to persons, including accidental death, which may be caused by the operations or activities conducted in, on, or over the License Area by OC San or its elected or appointed officers, agents, officials, employees, and volunteers, whether such damage shall accrue or be discovered before or after termination of this Agreement. Notwithstanding the foregoing, nothing herein shall be construed to require OC San to indemnify Licensee, its elected or appointed officers, agents, officials, employees, or volunteers from any Claim arising from the negligence or willful misconduct of Licensee, its elected or appointed officers, agents, officials, employees, or volunteers, respectively, or by Licensee's failure to comply with the terms, covenants and conditions of this Agreement.

## **19. INSURANCE**

Licensee is a self-insured governmental agency. Without limiting Licensee's indemnification of OC San, and prior to commencement of work, Licensee shall require Licensee's Contracted Representatives to obtain, provide and maintain at its own expense during the Term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms, covenants and conditions described in the Insurance Requirements attached hereto as **Exhibit "B"** and incorporated herein by reference.

## 20. HAZARDOUS SUBSTANCES

20.1 From the Effective Date of this Agreement throughout the Term, Licensee shall not use, store, manufacture or maintain in, on, under, about or within the License Area any Hazardous Substances except (i) in such quantities and types found customary in construction, repair, maintenance and operations of the construction staging yard approved by this Agreement, and (ii) petroleum and petroleum products contained within regularly operated motor vehicles. Licensee shall handle, store and dispose of all Hazardous Substances it brings onto the License Area in accordance with applicable laws.

20.2 For purposes of this Agreement the term "Hazardous Substance" means: (i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 *et seq.*; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 *et seq.*; California Health and Safety Code Sections 25280 *et seq.* (Underground Storage of Hazardous Substances); the California Hazardous Waste of Concern and Public Safety Act, Health and Safety Code Sections 25169.5 *et seq.*; California Health and Safety Code Sections 25501 *et seq.* (Hazardous Materials Release Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, Water Code Sections 13000 *et seq.*, all as they, from time-to-time may be amended, (the above-cited statutes are here collectively referred to as "the Hazardous Substances Laws") or any other Federal, State or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; (ii) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory, including but not limited to negligence, trespass, intentional tort, nuisance, waste or strict liability or under any reported decisions of a state or federal court; (iii) petroleum or crude oil; and (iv) asbestos.

20.3 Notwithstanding any contrary provision of this Agreement, and in addition to the indemnification duties of Licensee set forth in this Agreement, Licensee agrees to indemnify, defend with counsel reasonably acceptable to OC San, protect, and hold harmless OC San, its elected or appointed officers, agents, officials, employees, volunteers and assigns from and against any and all losses, fines, penalties, claims, damages, judgments, or liabilities, including, but not limited to, any repair, cleanup, detoxification, or preparation and implementation of any remedial, response, closure or other plan of any kind or nature which OC San, its elected or appointed officers, agents, officials, employees, volunteers, or assigns may sustain or incur or which may be imposed

upon them in connection with the use of the License Area provided under this Agreement by Licensee, arising from or attributable to the storage or deposit of Hazardous Substances on or under the License Area by Licensee. This Section is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 USC Section 9607(e), and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify OC San for any claim pursuant to the Hazardous Substance Laws or the common law.

20.4 OC San agrees to indemnify, defend with counsel reasonably acceptable to Licensee, protect, and hold harmless Licensee, its elected or appointed officers, agents, officials, employees, volunteers and assigns from and against any and all losses, fines, penalties, claims, damages, judgments, or liabilities, including, but not limited to, any repair, cleanup, detoxification, or preparation and implementation of any remedial, response, closure or other plan of any kind or nature which Licensee, its elected or appointed officers, agents, officials, employees, volunteers, or assigns may sustain or incur or which may be imposed upon them arising from the use of the License Area by OC San, its elected or appointed officers, agents, officials, employees, volunteers and assigns.

20.5 OC San agrees that OC San will not, and will not authorize any third party to use, generate, store, or dispose of any Hazardous Substances on, under, about or within the License Area in violation of any law or regulation. OC San and Licensee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs arising from any breach of any representation, warranty or agreement contained in this Section. This Section shall survive the termination of this Agreement. Upon expiration or earlier termination of this Agreement, Licensee shall surrender and vacate the License Area and deliver possession thereof to OC San on or before the termination date free of any Hazardous Substances released into the environment at, on or under the License Area and any Access Areas that are directly attributable to Licensee.

## **21. ASSIGNMENT**

All of the terms, covenants and conditions of this Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. This Agreement and the rights and obligations of Licensee is personal to Licensee and shall not be assigned, transferred, or hypothecated (collectively referred to as "transferred"), in whole or in part, without the prior written consent of OC San, which consent may be withheld in OC San's sole and absolute discretion for any reason or no reason at all. Any assignment of this Agreement or the License granted hereunder, voluntarily or by operation of law, shall automatically terminate this Agreement, unless Licensee has obtained the prior written consent of OC San.

## **22. CONFLICT OF INTEREST**

The Licensee or its employees may be subject to the provisions of the California Political Reform Act of 1974 ("Act"), which (a) requires such persons to disclose any

financial interest that may foreseeably be materially affected by the work performed under this License, and (b) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest. If subject to the Act, Licensee shall conform to all requirements of the Act. Failure to conform to the requirements of the Act constitutes a material breach and is grounds for immediate termination of this License by OC San. Licensee shall indemnify and hold harmless OC San for any and all claims for damages resulting from Licensee's violation of this Section.

### **23. NOTICES**

All notices, demands, requests or approvals to be given under the terms of this License shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Licensee to OC San shall be addressed to OC San at:

Orange County Sanitation District  
Attn: Wally Ritchie  
18480 Bandilier Circle  
Fountain Valley, CA 92708

All notices, demands, requests or approvals from OC San to Licensee shall be addressed to Licensee at:

City of Newport Beach  
Attn: Assistant City Engineer  
100 Civic Center Drive  
Newport Beach, CA 92660

Notwithstanding the foregoing, all notices under Section 7.1.4 shall be provided electronically as set forth therein.

### **24. STANDARD PROVISIONS**

24.1 Recitals. OC San and Licensee acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

24.2 Compliance with Laws. Licensee, at its sole cost and expense, shall observe, perform, and comply with all laws, statutes, ordinances, rules, and regulations promulgated by any governmental agency and applicable to the License Area, or the use thereof, including all Americans with Disability Act requirements, applicable zoning ordinances, building codes and environmental laws. Licensee shall not occupy or use the License Area or permit any portion thereof to be occupied or used for any use or

purpose that is unlawful, in part or in whole, or deemed by OC San to be disreputable in any manner or extra hazardous on account of fire.

24.3 Not Agent of OC San. Neither anything in this Agreement nor any acts of Licensee shall authorize Licensee to act as agent, contractor, joint venture or employee of OC San for any purpose.

24.4 Waiver. The waiver by either Party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either Party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

24.5 Integrated Agreement. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

24.6 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement, or any other attachments attached hereto, the terms of this Agreement shall govern.

24.7 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

24.8 Amendments. This Agreement may be modified or amended only by a written document executed by both Licensee and OC San and approved as to form by the OC San Attorney.

24.9 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

24.10 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

24.11 Equal Opportunity Employment. Licensee represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

24.12 Taxes. Licensee shall pay any and all personal interest property taxes, real property taxes, possessory interest taxes, fees and assessments, or similar charges which may at any time be imposed or levied by any public entity and attributable to the Agreement authorized herein. OC San hereby gives notice to Licensee, pursuant to Section 107.6 of the California Revenue and Taxation Code that this Agreement may create a possessory interest in and to the property of OC San, a tax-exempt public entity, the payment of which taxes shall be the sole obligation of Licensee. Licensee shall indemnify, defend and hold harmless OC San against any and all such taxes, fees, penalties or interest assessed, or imposed against OC San hereunder.

24.13 No Third-Party Beneficiaries. Neither anything in this Agreement nor any acts of Licensee shall authorize Licensee to act as agent, contractor, joint venture or employee of OC San for any purpose.

24.14 No Attorneys' Fees. In the event of any dispute under the terms of this Agreement the prevailing party shall not be entitled to attorneys' fees.

24.15 [reserved]

24.16 Time is of the Essence. Time is of the essence for this Agreement.

24.17 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

## **25. NO DAMAGES**

Licensee acknowledges that OC San would not enter into this Agreement if it were to be liable for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) under, or relating to, this Agreement or any of the matters referred to in this Agreement. Accordingly, Licensee covenants and agrees on behalf of itself and its successors and assigns, not to sue OC San (either in its capacity as licensor in this Agreement or in its capacity as OC San) for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) or monetary relief for any breach of this Agreement by OC San or for any dispute, controversy, or issue between OC San and Licensee arising out of or connected with this Agreement or any of the matters referred to in this Agreement, the parties agreeing that declaratory relief, injunctive relief, mandate and specific performance shall be Licensee's sole and exclusive judicial remedies. Notwithstanding the foregoing, nothing in this Section 25 shall limit Licensee's remedies as expressly set forth in this Agreement.

## **26. GOVERNMENT CLAIMS ACT**

Licensee and OC San agree that in addition to any claims filing or notice requirements in this Agreement, Licensee shall file any claim that Licensee may have

against OC San in strict conformance with the Government Claims Act (Government Code sections 900 et seq.), or any successor statute.

**[SIGNATURES ON NEXT PAGE]**



**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the dates written below.

|  |  |
|--|--|
| <p><b>LICENSEE:</b></p> <p><b>APPROVED AS TO FORM:<br/>CITY ATTORNEY'S OFFICE</b><br/>Date: _____</p> <p>By: _____<br/>Aaron C. Harp</p> | <p><b>CITY OF NEWPORT BEACH,</b><br/>A California municipal corporation<br/>Date: _____</p> <p>By: _____<br/>Grace K. Leung<br/>City Manager</p>               |
| <p><b>ATTEST:</b></p> <p>Date: _____</p> <p>By: _____<br/>Leilani I. Brown<br/>City Clerk</p>  | <p><b>LICENSOR:</b></p> <p><b>ORANGE COUNTY SANITATION DISTRICT</b><br/>Date: _____</p> <p>By: _____<br/>Name: Ryan P. Gallagher<br/>Title: Board Chairman</p> |
| <p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>By: _____<br/>Adriene Plescia Lynch<br/>Alston &amp; Bird LLP</p>               | <p><b>ATTEST:</b></p> <p>Date: _____</p> <p>By: _____<br/>Kelly A. Lore<br/>Clerk of the Board</p>   |

**[END OF SIGNATURES]**

Attachments:     **Exhibit "A"**: Depiction of License Area and Banning Gate  
                       **Exhibit "B"**: Insurance Requirements  
                       **Exhibit "C"**: Form of Main Gate Access Request

**EXHIBIT "A"**

**Depiction of the License Area**



## Exhibit "B"

### **Insurance Requirements**

1. Provision of Insurance. Without limiting Licensee's indemnification of OC San, and prior to commencement of Work, Licensee shall require Licensee's Contracted Representatives to obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and, in a form, satisfactory to OC San. Licensee agrees to cause Licensee's Contracted Representatives to provide insurance in accordance with requirements set forth here. If Licensee uses existing coverage to comply and that coverage does not meet these requirements, Licensee agrees to cause Licensee's Contracted Representatives to amend, supplement or endorse the existing coverage.
  
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by OC San's Risk Manager.
  
3. Coverage Requirements.
  - A. Workers' Compensation Insurance. Licensee shall maintain or Licensee's self-insurance shall cover Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each employee for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Licensee shall require each Licensee's Contracted Representatives to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with California law for all of the Licensee's Contracted Representatives' employees. The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against OC San, its elected or appointed officers, agents, officials, employees, volunteers, and any person or entity owning or otherwise in legal control of the property upon which Licensee performs the City Projects and/or services (if any) contemplated by this Agreement. Licensee shall submit and cause Licensee's Contracted Representatives to submit to OC San, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of OC San, its elected or appointed officers, agents, officials, employees, volunteers, and any person or entity owning or otherwise in legal control of the OC San Property upon which Licensee performs the City Projects and/or services (if any) contemplated by this Agreement.

B. General Liability Insurance. Licensee's self-insurance shall cover and Licensee shall cause Licensee's Contracted Representatives to maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate and two million dollars (\$2,000,000) completed operations aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

C. Automobile Liability Insurance. Licensee's self-insurance shall cover and Licensee shall cause Licensee's Contracted Representatives to maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Licensee arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

A. Waiver of Subrogation. All insurance coverages maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against OC San, its elected or appointed officers, agents, officials, employees, volunteers, and any person or entity owning or otherwise in legal control of the OC San Property upon which Licensee performs the City Projects and/or services (if any) contemplated by this Agreement or shall specifically allow Licensee, Licensee's Contracted Representatives or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Licensee hereby waives its own right of recovery against OC San and shall require similar written express waivers and insurance clauses from each of its Licensee's Contracted Representatives.

B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess liability, and pollution liability, automobile liability, protection and indemnity liability, and vessel pollution liability if required, but not including professional liability, shall provide or be endorsed to provide that OC San, its elected or appointed officers, agents, officials, employees, volunteers, agents, the State of California Department of Parks and Recreation, and any person or entity owning or otherwise in legal control of the OC San Property upon which Licensee's Representatives perform the City Projects and/or services (if any) contemplated by this Agreement shall be included as additional insureds under such policies.

C. Primary and Non-Contributory. Licensee's and Licensee's Contracted Representatives insurance coverages shall be primary insurance and/or the primary source of recovery with respect to OC San, its elected or appointed officers, agents, officials, employees, volunteers, and any person or entity owning or otherwise in legal control of the OC San Property upon which Licensee's Representatives perform the City Projects and/or services (if any) contemplated by this Agreement. Any insurance or self-insurance maintained by OC San shall be excess of Licensee's and Licensee's Contracted Representatives' insurance and shall not contribute with it.

D. Notice of Cancellation. All policies shall provide OC San with thirty (30) calendar days' notice of cancellation or nonrenewal of coverage (except for nonpayment for which ten (10) calendar days' notice is required) for each required coverage.

5. Additional Agreements Between the Parties. The Parties hereby agree to the following:

A. Evidence of Insurance. Licensee shall provide certificates of insurance to OC San as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. All of the executed documents referenced in this Agreement must be returned to OC San within ten (10) regular OC San business days after the Agreement is fully executed. Insurance certificates and endorsements must be approved by OC San's Risk Manager prior to commencement of work. Current certification of insurance shall be kept on file with OC San at all times during the term of this Agreement. OC San reserves the right to require complete, certified copies of all required insurance policies, at any time.

B. OC San's Right to Revise Requirements. OC San reserves the right at any time during the Term of the Agreement to change the amounts and types of insurance required by giving Licensee ninety (90) calendar days' advance written notice of such change.

C. Right to Review Subcontracts. Licensee agrees that upon request, all agreements with Licensee's Contracted Representatives or others with whom Licensee enters into agreements with on behalf of Licensee will be submitted to OC San for review. Failure of OC San to request copies of such agreements will not impose any liability on OC San, or its employees. Licensee shall require and verify that all Licensee's Contracted Representatives maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that OC San is an additional insured on insurance required from Licensee's Contracted Representatives. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.



D. Enforcement of Agreement Provisions. Licensee acknowledges and agrees that any actual or alleged failure on the part of OC San to inform Licensee of non-compliance with any requirement imposes no additional obligations on OC San nor does it waive any rights hereunder.

E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Exhibit are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Licensee (or Licensee's Contracted Representatives) maintains higher limits than the minimums shown above, OC San requires and shall be entitled to coverage for higher limits maintained by Licensee or Licensee's Contracted Representatives. Any available proceeds in excess of specified minimum limits of insurance and coverage shall be available to OC San.

F. Self-Insured Retentions. Licensee agrees not to permit Licensee's Contracted Representatives to self-insure or to use any self-insured retentions on any portion of the insurance required herein and further agrees that it will not allow any indemnifying Licensee's Contracted Representatives to self-insure its obligations to OC San. If Licensee's existing coverage includes a self-insured retention, the self-insured retention must be declared to OC San. OC San may review options with Licensee, which may include reduction or elimination of the self-insured retention, substitution of other coverage, or other solutions. Licensee agrees to be responsible for payment of any deductibles on Licensee's and/or any of its Licensee's Contracted Representatives' policies.

G. OC San Remedies for Non-Compliance. If Licensee or any Licensee's Contracted Representatives fails to provide and maintain insurance as required herein, then OC San shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Licensee's right to proceed until proper evidence of insurance is provided. Any amounts paid by OC San shall, at OC San's sole option, be deducted from amounts payable to Licensee or reimbursed by Licensee upon demand.

H. Timely Notice of Claims. Licensee shall give OC San prompt and timely notice of claims made or suits instituted that arise out of or result from Licensee's or Licensee's Contracted Representatives' performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. OC San assumes no obligation or liability by such notice but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve OC San.

I. Coverage not Limited. All insurance coverage and limits provided by Licensee or its Licensee's Contracted Representatives and available or applicable to this Agreement are intended to apply to the full extent of Licensee's self-insurance and Licensee's Contracted Representatives' policies, as applicable. Nothing contained in this Agreement or any other agreement relating to OC San or its operations limits the application of such insurance coverage.

J. Coverage Renewal. Licensee will cause Licensee's Contracted Representatives to renew the coverage required here annually as long as Licensee continues to perform any work under this Agreement or any other agreement with OC San. Licensee shall provide proof that policies of insurance required herein expiring during the Term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. In the case of Licensee's Contracted Representatives, a coverage binder or letter from Licensee's Contracted Representatives' insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to OC San within five (5) calendar days of the expiration of the coverages.



