

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

**THIS TEMPORARY, NON-EXCLUSIVE AND REVOCABLE LICENSE AGREEMENT FOR USE OF CITY PROPERTY** ("Agreement") is made and entered into as of this 1<sup>st</sup> day of June, 2024 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and ORANGE COUNTY SANITATION DISTRICT, a California public body ("Licensee"). Licensee and City 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. City is the owner of real property located at 100 Dover Drive, Newport Beach, California, Assessor's Parcel Number 117-801-10, commonly known as Lower Castaways Park ("Property") as depicted on Exhibit "A" attached hereto and incorporated herein by reference.
- C. Licensee intends to replace the nearby Bay Bridge Pump Station located at 250 East Coast Highway ("Project").
- D. Licensee requests to use a portion of the Property, approximately eighteen thousand (18,000) square feet ("License Area"), as depicted on Exhibit "B" attached hereto and incorporated herein by reference, for the siting of office trailers, temporary staging and storage of construction equipment and materials, and the parking of vehicles to support the Project.
- E. Pursuant to City Council Policy F-7, whenever less than the open market or appraised value is received for the use of City property, the City shall make specific findings setting forth the reasons thereof.
- F. On **[INSERT DATE HERE]**, the City Council made findings that Licensee's use of the License Area provides an essential or unique service to the community, as it is for purpose of facilitating the completion of the Project, which might not otherwise be provided were full market value of the License Area be required.

- G. City and Licensee desire to enter into this Agreement for Licensee to utilize the License Area for purpose of the Project, subject to the covenants and conditions set forth in this Agreement.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

## **1. LICENSE**

1.1 City 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 within the License Area.

1.2 Upon ten (10) calendar days' prior written notice by the City, Licensee shall relocate their equipment and materials to a different part of the Property, as directed by the City and to be generally depicted on an aerial exhibit included within said notice, should the City need to access or change the location of the License Area. This notification shall be issued in the City's sole and absolute discretion, and the cost of such relocation shall be borne by the Licensee with no cost or impact to the City.

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 License is to provide Licensee with temporary, non-exclusive use of the License Area as a temporary construction staging and storage site for equipment and materials (but specifically excluding storage of soils or dredged materials, which materials shall be stored by the Licensee at a separate location), for the siting of office trailers, and for parking, to facilitate the work necessary for the Project. 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 City, which consent may be withheld in City's sole discretion.

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

3.1 Licensee, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses and certificates that may be required by any governmental agency, including the City, in order to use the License Area as a temporary construction staging and storage site for equipment and materials, for the siting of office trailers, and for parking.

3.2 Licensee shall have in effect a Stormwater Pollution Prevention Plan ("SWPPP") and Best Management Practices plan ("BMPs") accepted by Licensee, its employees, contractors and subcontractors ("Licensee's Representatives") to ensure all activities on 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 the completion of the Project or December 31, 2028, whichever occurs first ("Term"). Both Parties understand and agree 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 or the Property.

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

The License is provided to Licensee at no charge. The City is not charging Licensee a fee comparable to the open market or appraised value of the License Area because the City finds that Licensee's use of the License Area, which is for the purpose of completion of the Project, is an essential or unique service to the community.

#### **6. UTILITIES**

6.1 Licensee shall be responsible for payment of all utilities furnished to or used on the License Area by Licensee, including, without limitation, electricity and water.

6.2 Licensee may use City's trash enclosures or public trash cans, provided however, that City may, at City's sole and absolute discretion, require Licensee to arrange for its own refuse collection.

6.3 Licensee shall be responsible for the maintenance, repair and/or replacement of utility lines within and exclusively serving the License Area, to the point of the utility's tie-in, or Licensee's pro rata share of utility lines serving Licensee on the License Area.

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

##### **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 the Property outside the License Area other than for purposes of accessing the License Area is strictly prohibited without prior written approval from the City.

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 City. Notwithstanding the foregoing, Licensee shall place all required construction notices and warning signs on or about the Property in the manner required by the City, Federal, State or local law.

7.1.6 Licensee shall protect the integrity of the License Area and any part of the Property used for purpose of accessing the License Area. Licensee shall prevent any oil, cement or other material spills on the public right-of-way adjacent to the Property, at the driveway, vehicular paths of travel on the Property, and sand at the License Area, any other area on or around the Property, and any other contiguous area used to access the License Area. Licensee shall return the License Area to City in the condition that existed as of the Effective Date of this Agreement, ordinary wear and tear excepted. Licensee shall, at its sole cost and expense, document (including photos and/or video) the condition of the Property existing as of the Effective Date and submit such documentation to the City.

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, visible from the public right-of-way and interior of the Property, 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 Property as absolutely required by the scope of the Project at any given time during the phases

of construction, and Licensee shall use its best efforts to reduce its impact to the 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 Project. Licensee shall use its best efforts to complete the Project on time or ahead of schedule and discontinue its use of the Property as soon as possible.

7.2.2 Licensee may use the License Area for the temporary storage of construction vehicles, equipment and materials, with the exception of any soil or dredged materials which are prohibited from being stored on the Property. 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 may place two (2) commercial office trailers in the License Area.

7.2.4 Licensee's Representatives (defined in Section 3) have the right to park personal vehicles within the License Area, and shall ensure that the gates to the License Area are can close around the vehicles, with the understanding that Licensee's Representatives shall walk from the License Area to the Project site. Licensee shall not park any vehicles outside the License Area.

7.2.5 Licensee shall operate the License Area with the least amount of construction-related vehicles stored within the License Area during each given phase of the Project, as may be required for demolition, grading, building construction, installation of force mains, and gravity sewer improvement scopes of work. Operation of construction vehicles in the License Area is limited to the hours set forth in Section 7.2.7.1 below.

7.2.5.1 Licensee shall follow any City imposed requirements on vehicle traffic, path of travel, and weight limits that may be a precondition to approval of the Project.

7.2.6 Licensee is strictly prohibited from bringing any soil or dredged materials from the Project on to the Property. Such soil or dredged material shall not be stored, nor brought on site even temporarily, nor in transport to a secondary site.

7.2.7 Licensee's access to and use of the License Area shall be limited to the hours between 7:00 a.m. to 6:00 p.m. Monday through Friday, and the hours between 8:00 a.m. and 6:00 p.m. on Saturday.

7.2.7.1 Operation of construction vehicles shall be limited to the non-peak hours of 9:00 a.m. and 3:00 p.m. Monday through Friday, consistent with the Impact Analysis of the Project's Environmental Impact Report ("EIR") of August 2020.

7.2.8 Licensee, at Licensee's 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 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 by the City. The fencing shall include the installation of a locking 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.

7.2.9 Licensee shall comply with all permits, regulations, and requirements applicable to the Project, including but not limited to the Coastal Development Permit No. PA2023-0076 issued by the City.

7.3 Other Users of Property. The License Area is a portion of the Property specifically designated for use by Licensee for the operations permitted herein. Certain other portions of the Property are not only open to the public, but shared with other tenants or licensees of the City, 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 Property.

## **8. CITY INSPECTION**

8.1 City 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 City and its authorized City representative(s) may, without prior notice to Licensee, enter upon and inspect the License Area for any lawful purpose, provided that City 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, City or its authorized City 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 City 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 primarily dedicated to the use and enjoyment of the public 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, City 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 City responsible or liable for and shall protect, defend, indemnify and hold City 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, City'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 City shall meet after the City determines that an emergency has ended to establish the time and manner in which access shall be restored. City 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 to a condition satisfactory to City, within twenty-four (24) hours after receipt of notice to do so, City may perform such work or have such work performed by others and Licensee shall immediately reimburse City for all direct and indirect costs associated with such work upon receipt of an invoice for such costs. Graffiti shall immediately be called in to the City's Graffiti Hotline at (949) 644-3333 for removal.

## **11. NO INTEREST IN 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, 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 City to regulate, govern and use the License Area and Property, as well as any existing encumbrances, deeds, covenants, restrictions, easements, dedications and other claims of title that may affect the License Area and Property.

## **13. CITY 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 City to use and occupy the License Area and the Property for any purpose.

## **14. RELOCATION**

City shall not at any time during the term of this Agreement require the Licensee to move the office trailers to another particular location within the License Area.

However, City reserves the right to change the boundaries of the License Area or its location within the Property, in which case Licensee shall relocate its equipment and materials to the new boundaries or location of the License Area at Licensee's expense and without making any claim against the City for reimbursement or damage therefor.

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

## **15. TERMINATION**

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

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

15.3 City 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 expiration or termination of this Agreement, Licensee, at its sole cost and expense, shall, within fifteen (15) calendar days, remove all of its equipment and stored materials, restore the License Area to its original condition or to a condition satisfactory to and approved by City, and vacate the License Area. Restoration may include, but is not limited to, coordinating with City to restore landscaping, and removing any and all debris, waste or other material. Should Licensee fail to restore the License Area to a condition satisfactory to City, City may perform such work or have such work performed by others and Licensee shall immediately reimburse City 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 Community Development Department. The Community Development Director or its designee shall be the License Administrator and shall have the authority to act for City under this License. The License Administrator or their authorized representative shall represent City 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 City, and to the fullest extent permitted by law, Licensee shall indemnify, defend, assume all responsibility for, and hold harmless City, 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 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 City's failure to comply with the terms 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 to the extent necessitated by Licensee's use of the License Area, 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 City 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 the City 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 the City 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 City 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 and conditions of this Agreement.

## **19. INSURANCE**

Without limiting Licensee's indemnification of City, and prior to commencement of work, Licensee shall 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 and conditions described in the Insurance Requirements attached hereto as Exhibit "C," and incorporated herein by reference.

## **20. HAZARDOUS SUBSTANCES**

20.1 From the Effective Date of this License 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 License 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.* ("CERLCA"); 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 License, and in addition to the indemnification duties of Licensee set forth in this Agreement, Licensee agrees to indemnify, defend with counsel reasonably acceptable to City, protect, and hold harmless the City, 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 the City, 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 City for any claim pursuant to the Hazardous Substance Laws or the common law.

20.4 City 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 City, its elected or appointed officers, agents, officials, employees, volunteers and assigns.

20.5 City agrees that City 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. City 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 City on or before the termination date free of any Hazardous Substances released into the environment at, on or under the License Area that are directly attributable to Licensee.

## **21. ASSIGNMENT**

All of the terms and provisions 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 the City, which consent may be withheld in City’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 City.

## **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 City. Licensee shall indemnify and hold harmless City 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 City shall be addressed to City at:

Community Development Department  
City of Newport Beach  
Attn: Real Property Administrator  
100 Civic Center Drive  
PO Box 1768  
Newport Beach, CA 92658

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

Orange County Sanitation District  
Attn: Cindy Murra  
10844 Ellis Avenue  
Fountain Valley, CA 92708  
Telephone: (714) 593-7327

## **24. STANDARD PROVISIONS**

24.1 Recitals. City 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 City to be disreputable in any manner or extra hazardous on account of fire.

24.3 Not Agent of City. Neither anything in this Agreement nor any acts of Licensee shall authorize Licensee to act as agent, contractor, joint venture or employee of City 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 City and approved as to form by the City 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. City 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 City, a tax-exempt public entity, the payment of which taxes shall be the sole obligation of Licensee. Licensee shall indemnify, defend and hold harmless City against any and all such taxes, fees, penalties or interest assessed, or imposed against City 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 City 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 City 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 City (either in its capacity as licensor in this Agreement or in its capacity as the City of Newport Beach) 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 City or for any dispute, controversy, or issue between City 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 City agree that in addition to any claims filing or notice requirements in this Agreement, Licensee shall file any claim that Licensee may have against City 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.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: \_\_\_\_\_

**CITY OF NEWPORT BEACH,**  
A California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Aaron C. Harp  
City Attorney

By: \_\_\_\_\_  
Grace K. Leung  
City Manager

**ATTEST:**

Date: \_\_\_\_\_

**LICENSEE: ORANGE COUNTY  
SANITATION DISTRICT**, a California public  
body

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

By: \_\_\_\_\_  
Name: Chad P. Wanke  
Title: Board Chairman

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Adriene Plescia Lynch  
Alston & Bird LLP

By: \_\_\_\_\_  
Kelly A. Lore  
Clerk of the Board

**[END OF SIGNATURES]**

Attachments:      Exhibit A:      Depiction of Property  
                         Exhibit B:      Depiction of License Area  
                         Exhibit C:      Insurance Requirements

**EXHIBIT "A"**  
**Depiction of Property**

DRAFT

**Exhibit “B”**  
**Depiction of the License Area**

DRAFT

## **EXHIBIT "C"**

### **Insurance Requirements**

1. Provision of Insurance. Without limiting Licensee's indemnification of City, and prior to commencement of Work, Licensee shall 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 City. Licensee agrees 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 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 the City's Risk Manager.

3. Coverage Requirements.

A. Workers' Compensation Insurance. Licensee shall maintain 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 subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with California law for all of the subcontractor's employees. The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against City, 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 Project and/or Services contemplated by this Agreement. Licensee shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, 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 Project and/or Services contemplated by this Agreement.

B. General Liability Insurance. Contractor shall 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 shall 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 City, 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 Project and/or Services contemplated by this Agreement or shall specifically allow Licensee 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 City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

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 City, 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 property upon which Licensee performs the Project and/or Services contemplated by this Agreement shall be included as additional insureds under such policies.

C. Primary and Non-Contributory. Licensee's insurance coverages shall be primary insurance and/or the primary source of recovery with respect to City, 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 Project and/or Services contemplated by this Agreement. Any insurance or self-insurance maintained by City shall be excess of Licensee's insurance and shall not contribute with it.



D. Notice of Cancellation. All policies shall provide City 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 City 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 City within ten (10) regular City business days after the Agreement is fully executed. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of work. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

B. City's Right to Revise Requirements. The City 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 subcontractors or others with whom Licensee enters into agreements with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Licensee shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that City is an additional insured on insurance required from subcontractors. 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 City to inform Licensee of non-compliance with any requirement imposes no additional obligations on City 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 maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher

limits maintained by the Licensee. Any available proceeds in excess of specified minimum limits of insurance and coverage shall be available to the City.

F. Self-Insured Retentions. Licensee agrees not 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 party to self-insure its obligations to City. If Licensee's existing coverage includes a self-insured retention, the self-insured retention must be declared to City. City 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 their policies.

G. City Remedies for Non-Compliance. If Licensee or any subcontractor fails to provide and maintain insurance as required herein, then City 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 City shall, at City's sole option, be deducted from amounts payable to Licensee or reimbursed by Licensee upon demand.

H. Timely Notice of Claims. Licensee shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Licensee's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City 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 City.

I. Coverage not Limited. All insurance coverage and limits provided by Licensee and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to City or its operations limits the application of such insurance coverage.

J. Coverage Renewal. Licensee will renew the coverage required here annually as long as Licensee continues to provide any Work under this Agreement or any other agreement with City. 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. A coverage binder or letter from Licensee's 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 City within five (5) calendar days of the expiration of the coverages.