

0150-13136-0000

TRANSMITTAL

TO The Council	DATE 07/13/2026	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT ALL	

PROPOSED PERSONAL SERVICES CONTRACTS BETWEEN THE BUREAU OF SANITATION AND 1) MOORE, IACOFANO, GOLTSMAN, INC., 2) THE POND CO., INC., 3) YUNSOON KIM DESIGN, INC., AND 4) FAR-EAST LANDSCAPE AND MAINTENANCE, INC., AND REOPENING THE REQUEST FOR QUALIFICATIONS FOR 2021 PRE-PROPOSAL MEETING ATTENDEES TO PROVIDE LANDSCAPING AND SITE SERVICES FOR A MAXIMUM POTENTIAL NINE-YEAR TERM, NOT TO EXCEED \$14.4 MILLION ACROSS ALL AGREEMENTS.

Approved and transmitted for further processing including Council consideration.
See the City Administrative Officer report attached.



MAYOR

(Mitch Kamin for)

Attachment

MWS/JWW/JVW:JPQ:FVC:10260115t

(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 06-04-26	C.D. No. All	CAO File No.: 0150-13136-0000				
Contracting Department/Bureau: Public Works: Bureau of Sanitation		Contact: Todd Cromwell – (310) 648-5912 Nancy Lantin – (213) 485-2158					
Reference: Transmittal from the Bureau of Sanitation dated January 14, 2026; Referred to this Office January 14, 2026.							
Purpose of Contract: Landscaping and site services in support of the Bureau of Sanitation's Clean Water and Environmental Programs							
Type of Contract: (X) New contract () Amendment, Contract No.		Contract Term Dates: Five years from the date of execution with two two-year renewal options					
Contract/Amendment Amount: Total amount not to exceed \$14,400,000. The \$14.4 million cost ceiling applies collectively to the entire group of contractors, large and small, and is not a cost ceiling that is meant to be applied to any individual contractor.							
Source of funds: Sewer Construction and Maintenance Fund and other funding sources as identified by the department							
Name and Address of Contractor:							
a) Moore, Iacofano, Goltsman, Inc. (MIG), 800 Hearst Avenue, Berkeley, CA 94710							
b) The Pond Co., Inc., 390 Alhambra Road E, San Gabriel, CA 91775							
c) Yunsoo Kim Design, Inc., 2629 Foothill Blvd., #204, La Crescenta, CA 91214							
d) Far-East Landscape and Maintenance, Inc., 6201 1/2 Van Nuys Blvd., Van Nuys, CA 91401							
	Yes	No	N/A	Contractor has complied with:	Yes	No	N/A
1. Council has approved the purpose	X			8. Business Inclusion Program	X		
2. Appropriated funds are available	X			9. Equal Benefits & First Source Hiring Ordinances	X		
3. Charter Section 1022 findings completed	X			10. Contractor Responsibility Ordinance	X		
4. Proposals have been requested	X			11. Disclosure Ordinances	X		
5. Risk Management review completed	X			12. Bidder Certification CEC Form 50	X		
6. Standard Provisions for City Contracts included	X			13. Prohibited Contributors (Bidders) CEC Form 55	X		
7. Workforce that resides in the City per Contractor:				14. California Iran Contracting Act of 2010	X		
a) Moore, Iacofano, Goltsman, Inc. - 3 percent							
b) The Pond Co., Inc. - 67 percent							
c) Yunsoo Kim Design, Inc.; 33 percent							
d) Far-East Landscape and maintenance, Inc. - 30 percent							

RECOMMENDATIONS

That the City Council:

1. Authorize the Board of Public Works (Board), or two members of the Board, to execute personal services agreements on behalf of the Bureau of Sanitation (Bureau) with the following contractors: a) Moore, Iacofano, Goltsman, Inc., b) The Pond Co., Inc., c) Yunsoo Kim Design, Inc., and d) Far-East Landscape and Maintenance, Inc., to provide landscaping and site services such as tree trimming, maintenance of water features and irrigation systems, and other types of landscape and site services, as previously approved by the Board on November 17, 2025, with a proposed initial term of five years with two two-year renewal options at the discretion of the City, for a total potential term of nine years, and a total contract cost not to exceed \$14.4 million across all agreements;

Felipe Valladolid Chavez			for
EVC	Analyst	10260115	City Administrative Officer

2. Instruct the Bureau to report to Council annually on the number of task order solicitations issued, use of contracts, and status of the awarded projects and affected funds;
3. Reopen the Request for Qualifications (RFQ) procurement process for the attendees of the July 1, 2021, pre-proposal meeting; and
4. Instruct the Bureau of Sanitation to report to Council for approval of any newly recommended contractors resulting from the reopening of the RFQ process.

SUMMARY

The Board of Public Works (Board), on behalf of the Bureau of Sanitation (Bureau), requests approval to execute personal services agreements with a) Moore, Iacofano, Goltsman, Inc., b) The Pond Co., Inc., c) Yunsoo Kim Design, Inc., and d) Far-East Landscape and Maintenance, Inc., as previously approved by the Board on November 17, 2022. The selected contractors will provide landscaping and site services such as tree trimming, maintenance of water features and irrigation systems, renovation projects using native and drought tolerant plants, site hardscape, landscape repair, and other types of landscape and site services. The proposed term of each agreement is five years with two discretionary two-year renewal options, for a potential term of nine years. The total contract cost is not to exceed \$14.4 million across all agreements, with compensation to be provided on a project-by-project basis subject to the availability of project funds. In accordance with the Los Angeles Administrative Code Section 10.5(a), Council approval is required as the term of each agreement is more than three years. The City Attorney has approved the proposed contracts as to form.

The Board also requests approval to reopen the Request for Qualifications (RFQ) procurement process for the attendees of the July 1, 2021, pre-proposal meeting in order to expand the list of available contractors. This Office supports the request to reopen the RFQ and recommends the department be instructed to report to Council for approval of any newly recommended contractors resulting from the reopening of the RFQ process.

BACKGROUND

The Bureau owns and operates multiple facilities citywide from which it operates and performs its varied mandates and core mission, including four Water Reclamation Plants, more than 40 Clean Water Conveyance facilities, several Solids Resources facilities, as well as various other facilities under the Watershed Protection Program. These facilities cover broad expanses of space and may require landscaping and site services such as tree trimming, maintenance of water features and irrigation systems, renovation projects using native and drought tolerant plants, site hardscape, landscape repair, and other types of landscape and site services.

Prior Contracts – To accomplish this work, and in addition to its regular workforce, the Bureau would like to use a Pre-Qualified On-Call (PQOC) list of contractors to address unanticipated workload increases, compliance deadlines, and to provide specialized technical expertise within the programs. Therefore, the Bureau proposes to use the services of on-call contractors to meet specialized needs and is seeking authority to establish two new on-call lists of landscape and site services contractors to provide services on an as-needed basis: one for projects less than or equal to \$50,000; and the other for projects above \$50,000.

Request for Qualifications (RFQ) Process - In 2021, the Board authorized the Bureau to issue an RFQ to solicit proposals to provide landscaping and site services such as tree trimming, maintenance of water features and irrigation systems, renovation projects using native and drought tolerant plants, site hardscape, landscape repair, and other types of landscape and site services. Proposers were instructed to select one of two work packages:

1. **Large Work Package:** A work package valued at greater than \$50,000 for the duration of the work or contract. This work package was designed to attract established contractors with the resources to undertake larger-scale projects.
2. **Small Work Package:** A work package valued at up to \$50,000 for the duration of the work or contract. This work package was designed to allow Community-Level Contractors (CLC) the opportunity to gain entrance into the contracting environment as a prime contractor on smaller-scale projects.

In addition to the work package, proposers were instructed to select one or more of the following service categories in which their firm would provide a specialized service or services: a) General Landscape/Hardscape Maintenance Services, b) Landscape Feature Maintenance, Construction, and Repair, c) Tree Trimming, d) Nursery Support, e) Professional Landscape Architectural Services, and f) Herbicide and Pesticide Application Services.

Contractor Selection Process – In accordance with Los Angeles City Charter Section 371, in 2021, the Board approved the release of an RFQ for the aforementioned services for a five-year term with two two-year renewal options and a combined maximum contract amount of \$14.4 million.

A mandatory pre-proposal meeting was held on July 1, 2021 to which 37 firms attended. The Bureau received a total of seven applications by the due date of August 4, 2021. An evaluation panel consisting of two Bureau staff scored the proposals based on the following criteria:

- Proposer Profile (Pass/Fail)
- Technical Qualifications and Past Experience (40 points)
- Past Performance (30 points)
- Cost Control (30 Points)

Three of the seven proposers were not recommended for approval due to documentation issues associated with the Business Inclusion Program and/or Statement of Qualifications. The contractors that were deemed eligible for award are shown on Table 1:

Table 1 – Landscaping Contractors by Work Package and Score		
Name of Contractor	Work Package	Score
Moore, Iacofano, Goltsman, Inc.	Large	95
The Pond Co., Inc.	Large	103
Yunsoo Kim Design, Inc.	Small	95
Far-East Landscape and Maintenance, Inc.	Small	70

If Council approves reopening the RFQ process, proposers who attended the Pre-Proposal Conference in 2021 but were not selected, may reapply.

Scope of Services and Assignment of Work – Under the proposed contracts, the contractors will be offered and selected through a Task Order Solicitation (TOS) process to perform general landscape and site services for all Bureau water reclamation plants, clean water conveyance facilities, environmental quality program facilities, several solid resources facilities, and various facilities under the Watershed Protection Program. Table 2 provides a summary of the specific potential tasks associated with each contractor:

Table 2 – Landscaping Contractors and Scope of Work	
Name of Contractor	Scope of Work
Moore, Iacofano, Goltsman, Inc.	Professional Landscape and Architectural Services, including, design landscaping, water features, lakes, ponds, dry wells, bioswales, rain gardens; water gardens; and stormwater capture landscapes
The Pond Co., Inc.	Renovation and maintenance of lakes, ponds, streams, and display fountains; Irrigation system installation; construction site debris clean-up, off site recycling; plant material propagation, greenhouse management, nursery plant care; and irrigation management
Yunsoo Kim Design, Inc.	Design landscaping, water features, lakes, ponds, dry wells, bioswales, rain gardens, water gardens using reclaimed water; and, stormwater capture landscapes
Far-East Landscape and Maintenance, Inc.	General landscape care; maintenance and care of hardscape areas, as-needed additional seasonal labor and emergency support; brush clearance, transportation and surface application of wood mulch as needed; soil conditioning; hydro-seeding applications; renovation and maintenance of lakes, ponds, streams, display fountains; irrigation system installation, renovation, and repair; conversion of existing landscaped areas into water-wise, drought-tolerant landscapes; construction site debris clean-up, tree pruning, plant material trimming, and off-site recycling of green waste; and herbicide and pesticide services

Facilities Requiring Landscaping Services – Table 3 lists the Bureau facilities authorized to issue as-needed Task Order Solicitations to the four proposed contractors, as well as any future firms if City Council approves reopening the RFQ process. Due to the broad scope of work and the specialized skills, licenses, and certifications required, the Bureau requires contracted support.

Historically, most landscaping work has been performed in-house, except for the Japanese Garden, which was managed through Letters of Agreement. Existing staff lack both the capacity and the specialized credentials required to meet these needs across all facilities. Therefore, the Bureau proposes to use on-call contractors. The estimates used to calculate the \$14.4 million cost ceiling are detailed in Table 3 below:

**Table 3 – In-House Landscaping and Site Services Facilities
Cost Estimates Per Year**

FACILITY	PROJECT DESCRIPTION	YEARLY ESTIMATE	NINE-YEAR PROJECTION
D.C. Tillman Water Reclamation Plant	Tree Pruning - DCT has over 350 trees within its area of maintenance. Architectural Services are necessary to remain in compliance with current standards.	\$300,000	\$2,700,000
Japanese Garden	Certified Arborist Services, Reporting and Tree Care - Berm landscape requires arbo-cultural expertise and related services to maintain the care and health of the protected Oak species and other trees located on the Berm.	115,000	1,035,000
L.A. Glendale Water Reclamation Plant	Tree Pruning - LAG has over 170 trees within its area of maintenance. Architectural Services are necessary to remain in compliance with current standards.	100,000	900,000
Terminal Island Water Reclamation Plant	General Landscape Care: Brush Clearance and Removal. Landscape Feature Maintenance: Pond and Irrigation maintenance. Tree Trimming: Tree Trimming and Removal. Herbicide and Pesticide Services.	125,000	1,125,000
East Valley Collection Yard	Hardscaping repair and re-construction, drought tolerant landscaping, landscaping architectural services	100,000	900,000
Vermont Stormwater Green Street Phase 1 & Phase 2	Landscaped stormwater detention basin. De-weed, water as needed, and replant.	30,000	270,000
Echo Park Lake	Trash, debris, aquatic algae, and weed removal and disposal. Invasive species control, plant care and replacement repair of safety barriers, bird deterrents. Excess sediment removal and hauling, disposal; control treatments (for algae and blue green algae).	480,000	4,320,000
Hollenbeck Park Rehabilitation	Lake rehabilitation and treatment of wetland edges.	350,000	3,150,000
	TOTAL	\$1,600,000	\$14,400,000

Term and Compensation – Funding will be provided on a project-by-project basis from the Sewer Construction and Maintenance Fund and other funding sources as identified by the department. The term of the proposed contracts shall be for a five-year term with two two-year renewal options and a combined maximum contract amount of \$14.4 million. This constitutes approximately \$1.6 million per year for work associated with about 67 potential projects. Funds and appropriations will be determined by the Director of the Bureau through the “Project Review by Director” process at the time of approval of the TOS. Compensation for services will be provided through the following methods or a combination thereof:

- **Lump Sum** – Contractor is compensated for completion of designated project milestones. All of the Contractors’ costs including employee salaries, overhead, other direct costs, and profit are included in the Lump Sum Amount.

- **Cost Reimbursement Plus Profit** – the Project Services Cost is based on the estimated hours of labor at estimated direct labor rates, the allocated indirect expenses, other direct costs, and profit.
- **Hourly Billing Rate** – Contractor is compensated for time directly charged to performance of a project using approved salary rates, fringe benefits, overhead, profit, and all other expenses incurred by the contractor.

CITY COMPLIANCE

Pursuant to Charter Section 1022, on May 28, 2021, the Personnel Department determined that the proposed services can be performed more feasibly and economically by a contractor rather than by City employees. The Bureau requires landscape and site services that involve specialized skills. While a portion of the work requested of the contractors could be performed by City employees such as Gardener Caretakers, Senior Gardeners, Irrigation Specialists, Tree Surgeon Assistants, Tree Surgeons, Landscape Architects, Park Maintenance Supervisors, and Principal Grounds Maintenance Supervisors, there is no combination of City classifications which can perform all of the requested work. The proposed Agreement and the Contractor comply with the City's contracting requirements.

Business Inclusion Program – In accordance with Los Angeles Charter Section 371, this Agreement is subject to the competitive bid process. In accordance with Los Angeles City Administrative Code Section 10.5(a), Council approval is required as the total contract term exceeds three years. The City Attorney has approved the proposed agreements as to form.

FISCAL IMPACT STATEMENT

There is no impact to the General Fund. The 2026-27 costs for these contracts will be paid using appropriations for these purposes in the Sewer Maintenance and Operation Fund No. 760, Solid Waste Resources Revenue Fund No. 508, and the Stormwater Pollution Abatement Fund No. 511; and as projects require, other funds and appropriations determined by the Director and General Manager of the Bureau of Sanitation. Approval of this report will result in potential expenditures of up to \$14.4 million over a maximum nine-year term. The Agreement includes Standard Provisions which contain a City obligation limitation clause which limits the City's obligation to make payments to funds which have been appropriated for this purpose.

FINANCIAL POLICIES STATEMENT

The recommendations in this report complies with the City's financial policies in that the City's financial obligation is limited to funds budgeted for this purpose.

Attachment – Board Letter dated January 14, 2026 and Joint Bureau of Sanitation and Bureau of Contract Administration Joint Board Report No. 1 dated November 17, 2025 – Request for Authority to Award and Execute a Personal Services Contracts for Landscaping and Site Services in Support of LA Sanitation's Clean Water and Environmental Programs – A Community Level Contracting Opportunity (WO #S10FPURC)

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<http://bpw.lacity.org>

January 14, 2026

BPW-2025-0735

The Honorable Mayor Bass
City Hall – Room 320
Los Angeles, CA 90012

**PERSONAL SERVICES CONTRACT – LA SANITATION'S CLEAN WATER AND
ENVIRONMENTAL PROGRAMS**

As recommended in the accompanying report from the Directors of the Bureaus of Sanitation and Contract Administration, which this Board has adopted, the Board of Public Works (Board) recommends that the Mayor and City Council:

1. AUTHORIZE to execute a Personal Services Contract with Moore Iacofano Goltsman, Inc., The Pond Co., Inc., Yunsoo Kim Designs, Inc., and Far-East Landscape and Maintenance, Inc., respectively, for Bureau of Sanitation and Environment Landscaping and Site Services;
2. REOPEN the Request for Qualifications for the attendees of the July 1, 2021, pre-proposal meeting; and
3. AUTHORIZE the President or two members of the Board will EXECUTE the contracts.

(W.O.: S10FPURC)

Fiscal Impact: These contracts will be funded by the Sewer Maintenance and Operation Fund No. 760, Fund No. 508, and Fund No. 511; and as projects require, other funds and appropriations determined by the Director and General Manager of LASAN.

Sincerely,

A handwritten signature in black ink, appearing to read 'TJ Knight', written in a cursive style.

TJ KNIGHT,
Asst. Executive Officer, Board of Public Works

TK:lc

DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION
BUREAU OF CONTRACT ADMINISTRATION
JOINT BOARD REPORT NO. 1
NOVEMBER 17, 2025

CD: ALL

ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California

NOV 17 2025
AND REFERRED TO THE MAYOR


Executive Officer
Board of Public Works
AND REFERRED TO THE CITY COUNCIL

AUTHORITY TO AWARD AND EXECUTE A PERSONAL SERVICES CONTRACT WITH EACH QUALIFIED PROPOSER FOR LANDSCAPING AND SITE SERVICES IN SUPPORT OF LA SANITATION'S CLEAN WATER AND ENVIRONMENTAL PROGRAMS - A COMMUNITY LEVEL CONTRACTING OPPORTUNITY (WO# S10FPURC)

RECOMMENDATIONS

1. Approve and forward this report with transmittals to the Mayor and City Council (Council) with the request that the Board of Public Works (Board) be authorized to execute a Personal Services Contract with Moore Iacofano Goltsman, Inc. (MIG), The Pond Co., Inc. (Pond Co.), Yunsoo Kim Designs, Inc. (Yunsoo Kim), and Far-East Landscape and Maintenance, Inc. (Far-East Landscape), respectively, for LA Sanitation and Environment (LASAN) Landscaping and Site Services.
2. Reopen the Request for Qualifications for the attendees of the July 1, 2021 pre-proposal meeting.
3. Upon the Mayor's and Council's authorization, the President or two members of the Board will execute the contracts.

TRANSMITTALS

1. Copy of the adopted LASAN and Bureau of Contract Administration (BCA) Joint Board Report No. 1, dated May 12, 2021, authorizing LASAN to distribute a Request for Qualifications (RFQ) and to negotiate a contract for the LASAN Environmental Landscaping and Site Services.
2. Copy of the proposed Personal Services Contract between the City of Los Angeles and Yunsoo Kim Designs, Inc.
3. Copy of the proposed Personal Services Contract between the City of Los Angeles and Moore Iacofano Goltsman, Inc. (MIG).
4. Copy of the proposed Personal Services Contract between the City of Los Angeles and The Pond Company, Inc.
5. Copy of the proposed Personal Services Contract between the City of Los Angeles and Far East Landscape and Maintenance, Inc.

FISCAL IMPACT STATEMENT

These contracts will be funded by the Sewer Maintenance and Operation (O&M) Fund No. 760, Fund No. 508, and Fund No. 511; and as projects require, other funds and appropriations determined by the Director and General Manager of LASAN.

DISCUSSION

Background:

LASAN owns and operates four (4) Water Reclamation Plants, more than forty (40) Clean Water Conveyance facilities, several Solids Resources facilities, as well as various other facilities under the Watershed Protection Program. These facilities periodically require landscaping and site services such as tree trimming, maintenance of water features and irrigation systems, renovation projects utilizing native and drought tolerant plants, site hardscape, landscape repair, and other types of landscape and site services.

Existing staff cannot adequately perform the required landscaping and site services work at all the facilities owned by LASAN due to the broad scope of work and specialized skills, licenses, and certifications required to perform the work. As a result, LASAN is proposing to utilize the services of on-call contractors to meet these specialized needs where long-term staffing is not feasible and existing staffing is not available or able to perform these required tasks. Therefore, LASAN seeks to establish two new on-call lists of landscape and site services contractors to provide services on an as-needed basis: one for work packages less than or equal to \$50,000; and the other for work packages above \$50,000. Proposers responding to LASAN's Request for Qualifications (RFQ) were required to select either work package that they wished to participate in at the time their Statement of Qualifications (SOQs) were submitted. LASAN developed two on-call lists to attract both large companies that can provide a wide variety of specialized services, and smaller companies the opportunity to gain entrance into the City of Los Angeles contracting environment in support of Community-level Contracting (CLC).

Scope of On-Call Landscape and Site Services:

LASAN plans to utilize landscape and site services contractors to provide the following services:

General Landscape/Hardscape Maintenance Services:

- General landscape care
- Maintenance and care of hardscape areas, earthen pathways, and facility amenities
- Brush clearance
- Soil conditioning
- Hydro-seeding applications

Landscape Feature Maintenance, Construction and Repair:

- Renovation and maintenance of natural and man-made water bodies, water features, dry wells, bioswales, permeable walkways, etc.
- Landscape features construction, renovation, and repair
- Site hardscape/concrete repair and replacement
- Irrigation system installation, renovation, and repair
- Construction site debris cleanup, off-site recycling and/or disposal of non-recyclable materials

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Tree Trimming:

- Professional tree pruning/shaping, plant material trimming, and offsite recycling of green waste

Nursery Support:

- Plant material propagation, nursery plant care, and irrigation management

Professional Landscape Architectural Services:

- As-needed professional landscape architectural services of water features, lakes, ponds, dry wells, etc.
- Design of water gardens
- Design of stormwater capture landscapes integral features

Herbicide and Pesticide Services:

- Services of a State of California licensed pest control advisor
- Agency reporting and record accountability of pesticide, herbicide, and fungicide applications

While performing the services, contractors shall adhere to the City's General Conditions and Requirements (if applicable), specific work packages, plans, technical specifications, and other related policies.

2021 Request for Qualifications (RFQ) Process

On May 12, 2021, the Board authorized LASAN to distribute an RFQ to solicit proposals. (Transmittal #1)

Following the authorization, a mandatory pre-proposal meeting for contractors was held on July 1, 2021 with thirty-seven (37) firms attending.

The RFQ required proposers to select one of two work packages:

Large Work Package: A work package valued at greater than \$50,000 for the duration of the work or contract. This work package was designed to attract established contractors with the resources to undertake larger-scale projects.

Small Work Package: A work package valued at up to \$50,000 for the duration of the work or contract. This work package was designed to allow Community-Level Contractors (CLC) the chance to gain entrance into the contracting environment as a prime contractor on smaller-scale projects.

In addition to selecting a work package, proposers were directed to select one or more of the following service categories in which their firm would provide a specialized service(s), which were subcategories within the broader Architectural or Landscaping services:

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1. General Landscape/Hardscape Maintenance Services
2. Landscape Feature Maintenance, Construction and Repair
3. Tree Trimming
4. Nursery Support
5. Professional Landscape Architectural Services
6. Herbicide and Pesticide Application Services

2021 Statement of Qualifications (SOQ)

By the due date of August 4, 2021, LASAN received a total of seven (7) SOQs. Of those seven submitted, three (3) were later determined to have critical issues with their SOQ and/or Business Inclusion Program (BIP) documentation that could result in them being deemed non-responsive. As a result, only four (4) contractors were eligible for award, two for the Large Work Package, and two for the Small Work Package. Moreover, each proposer within each of those work package categories each selected Architectural and Landscaping services, respectively, such that a true on-call list could not be established as originally intended for either the small or large work packages since any proposed list was now reduced to a single contractor under each of the service categories (Architectural and Landscaping) as illustrated in the chart below:

"On-call Lists"	Work Package	Architectural	Landscaping
List #1	Small- up to \$50,000	Contractor A	Contractor B
List #2	Large- above \$50,000	Contractor C	Contractor D

Given the inability to establish an on-call list for either work package, LASAN recommends the following:

- Move forward with award to the existing four contractors (Yunsoo Kim, MIG, Pond Co., and Far-East Landscape)
- Simultaneously reopen the 2021 RFQ to the remaining contractors who attended the 2021 mandatory meeting.

Evaluation of 2021 SOQs:

The evaluation and scoring of the technical and business qualifications were completed by an evaluation team consisting of two (2) LASAN staff members who evaluated the SOQs based on the criteria established in the RFQ:

- Proposer Profile (Pass/Fail)
- Technical Qualification and Past Experience (40 points)
- Past Performance (30 points)
- Cost Control (30 points)

The following tables contain proposer scores as a result of the evaluation:

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Table 1. Scores and ranking of Proposers (Large Work Package):

COMPANY	SCORE	COMMENTS
Pond Co.** (SBE, EBE)	103	N/A
MIG (OBE)	95	N/A
Dwayne Brady Landscape (OBE)	75	*May be recommended non-responsive (BIP)
Landscape Support Services (WBE (F/C))	70	*May be recommended non-responsive (SOQ)
McNabb Construction, Inc. (OBE)	70	*May be recommended non-responsive (SOQ)

* The Proposer may be recommended non-responsive, however, in the event that the RFQ is reopened, LASAN is not making this recommendation in order to allow the Proposer the opportunity to submit a revised SOQ and/or BIP documentation and potentially address the issues with their original SOQ and/or BIP documentation.

** Certified Local Business Enterprise (LBE).

Table 2. Scores and ranking of Proposers (Small Work Package):

COMPANY	SCORE	COMMENTS
Yunsoo Kim* (MBE (M/APA), SBE, EBE)	95	N/A
Far-East Landscape* (MBE (M/APA), SBE, EBE)	70	N/A

* Certified LBE.

On 02/08/2022, LASAN met with the final four proposers to negotiate fee percentages. Table 3 shows the final fee percentages negotiated and agreed to by LASAN and all four proposers.

Table 3. Negotiated fee percentage

LASAN	Overhead Rate	Profit (%)	Mark-up	
			Subcontractor	Direct Costs
LASAN (Original)	10%	5%	10%	Cost + 10%
LASAN (Negotiated)	5%	5%	5%	Cost + 5%

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Tables 4-7. Fee Schedules

Table 4. MIG

POSITION	RATE (\$/HR.)
Principal	\$220-\$240
Senior Landscape Architect	\$140-\$180
Senior Landscape Designer	\$120

Table 5. Pond Co.

POSITION	RATE (\$/HR.)
Supervisor	\$100
Foreman	\$100
Laborer	\$55

Table 6. Yunsoo Kim

POSITION	RATE (\$/HR.)
Principal	\$79.61
Senior Landscape Designer	\$35.01
Landscape Designer	\$25.00

Table 7. Far-East Landscape

POSITION	RATE (\$/HR.)
Supervisor	\$65
Laborers	\$50
Tree Trimmer	\$85
Pest Control	\$120

LOCAL BUSINESS PREFERENCE (LBP) PROGRAM

All Proposers are eligible to participate in the LBP Program by qualifying as a Local Business Enterprise (LBE). The City shall grant eight percent (8%) of the total possible evaluation points added to their evaluation score to those Proposers who are certified as an LBE firm. Those Proposers who do not qualify as an LBE, but identify qualified LBE-certified subcontractors to perform work under this RFP, will receive a one percent (1%) preference, up to a maximum of five percent (5%), of the total possible evaluation points added to their evaluation score for every ten percent (10%) of the cost of the proposed work to be performed by certified LBE subcontractors. However, the preference given for a Proposer's selection of an LBE subcontractor will not be granted since no specific work is being pledged to subcontractors at this time.

Pursuant to the LBP Program, established by Ordinance No. 181910, Pond Co., Far-East Landscape, and Yunsoo Kim are certified as an LBE firms and therefore were awarded eight (8) points to their final evaluation score. MIG is not certified as an LBE firm, therefore, they were not awarded any additional points to their final evaluation score.

Prevailing Wage Requirements

Some aspects of this contract require the payment of prevailing wages. These include landscape and hardscape maintenance, tree trimming, brush clearance, construction, repair and maintenance of irrigation systems, pathways, etc. Contractors engaged in that work shall comply with all provisions of the California Labor Code relating to public works wages, and in specific, with those laws requiring the contractor to pay not less than the "General Prevailing Wage Rates" to all workers employed during the work.

Additionally, the contractor shall employ apprentices as required by the California Labor Code, and submit certified payroll records weekly utilizing the City's On-Line Certified Payroll System (OCPS). The contractor, and all subcontractors, shall cooperate in allowing Labor Compliance Section staff access to the job site to interview workers. The contractor shall post a copy of the "General Prevailing Wage Rates" in a conspicuous place at the job-site.

Landscape design, architectural services and herbicide and pesticide services are not subject to the payment of prevailing wages. For a copy of the prevailing wage rates, or for any questions, contact the Office of Contract Compliance at (213) 847-2662.

COST CEILING AND TERMS OF CONTRACT

The proposed term of agreement is five years with two (2) 2-year renewal options. The total estimated cost ceiling is \$14.4 million including both renewal options (5yrs + 2yrs + 2yrs). The \$14.4 million cost ceiling applies collectively to the entire group of contractors, large and small, and is not a cost ceiling that is meant to be applied to any individual contractor, large or small.

The following conditions will only go into effect in the event the RFQ is re-opened, and additional companies are added to each work package list, establishing a true bench list.

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Selected contractors will be placed in random order on either the large or small work package list according to their preference as noted in their SOQs. Project assignments under these contracts will generally be done in either one of the following manners below:

- For Large Projects with an estimated cost greater than \$50,000, the City will issue a Task Order Solicitation (TOS) describing the project scope and will request the top three (3) contractors on the list to submit proposals in response to the TOS. For each desired project scope, the project will be awarded to the on-call contractor whose proposal best represents the best overall value to the City for the requested work. The selected contractor will be moved to the bottom of the list for the purpose of subsequent work assignments. Once an agreement is reached, the City will issue a Notice to Proceed (NTP). If an agreement cannot be reached with the first contractor, the City reserves the right to negotiate with the next contractor on the list and so on until an agreement is reached.
- For Small Projects equal to or less than \$50,000, the City will issue a TOS to the first contractor on the list qualified to perform the work. Negotiations will follow regarding the terms of the project, specifically the scope of work, deliverables, schedule, and costs. If an agreement cannot be reached with the first contractor, the contractor will be rotated to the bottom of the list for the purpose of subsequent work assignments. The City reserves the right to negotiate with the next qualified contractor on the list and so on until an agreement is reached. The successful contractor will then be rotated to the bottom of the list for subsequent work assignments. Once an agreement is reached, the City will issue an NTP.

The City reserves the right to advertise any project regardless of size to all contractors on the appropriate list. Additionally, and under urgent and special conditions, the City may choose to award the project regardless of size to the first ranked contractor on the appropriate list.

BUSINESS INCLUSION PROGRAM (BIP)

At the time of the distribution of the RFQ, the City established anticipated participation levels for this contract of eighteen percent (18%) MBE, four percent (4%) WBE, ten percent (10%) SBE, five percent (5%) EBE, two percent (2%) DVBE, and zero percent (0%) LGBTBE; however, due to the as-needed nature of the contracts, the pledged participation levels could not be calculated at the time of award. MIG and Pond Co. have been found responsive in successfully completing their BIP evaluations.

Yunsoo Kim and Far-East Landscape each selected the Small Work Package (projects equal to or less than \$50,000). Due to the size and value of the projects the Mayor's Office waived the BIP Outreach requirements, on March 26, 2020, for proposers who selected to be placed on the small work package list. Therefore, Yunsoo Kim and Far-East Landscape were not required to perform a BIP Outreach.

Pond Co. did not pledge to utilize any subcontractors, therefore, have zero percent (0%) pledged participation levels for all categories.

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MIG has pledged to utilize the subcontractors shown in Table 4 on the Large Work Package.

Gender/Ethnicity Codes:

AA = African American

SAA = Subcontinent Asian American

C = Caucasian

M = Male

HA = Hispanic American

APA = Asian Pacific American

NA = Native American

F = Female

Table 4. BIP Participation Levels for MIG

SUBCONTRACTOR	GENDER/ETHNICITY	MBE/ WBE/ SBE/ EBE/ DVBE/ OBE
CWE	M/HA	MBE/SBE
Craftwater Engineering, Inc.	-/-	SBE/DVBE
VCA Engineers*	M/APA	MBE/SBE
Sustainable Landesign	M/HA	MBE/SBE/EBE
Selbert Perkins Design	F/C	WBE/SBE/EBE
Swift Lee Office, Inc.	-/-	SBE/EBE
Carlberg Associates	-/-	OBE
TBD Consultants	-/-	OBE
Integral Group	-/-	OBE
PACE Advanced Water Engineering	-/-	OBE

*Certified Local Business Enterprise (LBE).

(Continued on next page)

Other City Policies and Requirements

MIG, Pond Co., Yunsoo Kim, and Far-East Landscape shall comply with all City requirements, including:

- Non-Discrimination/Equal Employment Practices/Affirmative Action
- Living Wage and Worker Retention Ordinances
- Equal Benefits Ordinance
- Business Tax Registration Certificate
- Child Support Obligations Ordinance
- Insurance and Performance Bond Requirements
- Slavery Disclosure and Disclosure of Border Wall Contracting Ordinances
- Americans with Disabilities Act
- Municipal Lobbying Ordinance
- Los Angeles Residence Information
- City of Los Angeles Contract History
- Non-Collusion Affidavit
- First Source Hiring Ordinance
- Contractor Bidder Campaign Contribution and Fundraising Restrictions
- Iran Contracting Act of 2010
- City Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance
- COVID-19 Requirements
- Contractor Data Reporting

NOTIFICATION OF INTENT TO CONTRACT

The required Notification of Intent to Contract was filed with the City Administrative Officer Clearinghouse on September 7, 2016.

CHARTER SECTION 1022

On September 29, 2016 and again on May 28, 2021, the Personnel Department concluded that City employees do not have the expertise to perform these services and that the work assignment exceeds staffing availability.

CONTRACTOR RESPONSIBILITY ORDINANCE

All contractors participating in this program are subject to compliance with the requirements specified in the City of Los Angeles Contractor Responsibility Ordinance #173677, [Article 14, Chapter 1, Division 10, L.A.C.C.]. Failure to comply with the requirements specified in this ordinance will render the bidder's contract subject to termination pursuant to the conditions expressed therein.

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CONTRACTOR PERFORMANCE EVALUATION

In accordance with Article 13, Chapter 1, Division 10 of the City of Los Angeles Administrative Code, the appropriate City personnel responsible for quality control of this personal services contract shall submit Contractor Performance Evaluation Reports to BCA upon completion of this contract.

LOS ANGELES RESIDENCE INFORMATION

The headquarters of MIG is located at 617 West Seventh Street, Suite 304, Los Angeles, CA 90017. MIG employs 250 of which 24% reside in the City of Los Angeles.

The headquarters of Pond Co. is located at 390 Alhambra Road #E, San Gabriel, CA 91775. Pond Co. employs six (6) of which 67% reside in the City of Los Angeles.

The headquarters of Yunsoo Kim is located at 2629 Foothill Blvd. #204, La Crescenta, CA 91214. Yunsoo Kim employs three (3) with one (1) employee residing in the City of Los Angeles.

The headquarters of Far-East Landscape is located at 621½ Van Nuys Blvd. Suite #B, Van Nuys, CA 91401. Far-East Landscape employs 54 of which 30% reside in the City of Los Angeles.

APPROVED AS TO FORM

The proposed contracts have been approved as to form by the Office of the City Attorney.

CONTRACT ADMINISTRATION

Responsibility for the administration of this contract will be with HWRP of LASAN.
PROGRAM REVIEW BY DIRECTOR (PRD) APPROVAL

This contract was approved by PRD on October 21, 2024 in the amount of \$14,400,000.

(Continued on next page)

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STATUS OF FINANCING

The total funding for this project is not to exceed \$14,400,000. No Funding is required at this time. Specific funding information will be provided at the time of approval of the project awards. Funding sources may include, but are not limited to the Fund No. 760, Sewer Operations and Maintenance Fund; Fund No. 508, Solid Waste Resource Revenue Fund; Fund No. 511, Stormwater Pollution Abatement Fund; and Fund No. 60W, Measure W Municipal Fund.

Funds and appropriations for both current and future fiscal years are not yet identified and existing appropriations may change based on available cash balances. Therefore, funds and appropriations will be determined by the Director and General Manager of LASAN.

The contracts to be entered into with the selected contractors will not have a single, specific source of funds attached to it. Instead, funds will be identified by the Director of LA Sanitation and Environment on a project-by-project basis from various sources at the time specific project awards are issued to the contractors. Notwithstanding any other provision of these contracts, including any exhibits or attachments incorporated therein, and in order for the City to comply with its governing legal requirements, the City shall have no obligation to make any payments to the contractor unless the City shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in these contracts.

The Contractor agrees that any services provided by the Contractor, purchases made by the Contractor, or expenses incurred by the Contractor in excess of the appropriation(s) shall be free and without charge to the City and the City shall have no obligation to pay for the services, purchases, or expenses. The Contractor shall have no obligation to provide any services, provide any equipment, or incur any expense in excess of the appropriation, amount(s) until the City appropriates additional funds for this Contract.

FUTURE ACTIONS

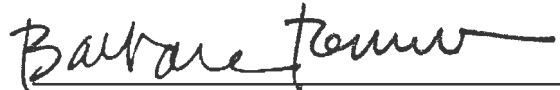
Upon authorization by the Council and the Mayor, the Board will execute the contracts with proposed vendors.

(Signature page follows)

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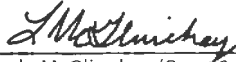
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Respectfully submitted,



BARBARA ROMERO
Director and General Manager
Bureau of Sanitation

COMPLIANCE REVIEW PERFORMED
AND APPROVED BY:



Lynda McGlinchey (Sep 26, 2025 12:44:00 PDT)

LYNDA McGLINCHEY, Program Manager II
Office of Contract Compliance
Bureau of Contract Administration



JOHN L. REAMER, JR.
Inspector of Public Works
Bureau of Contract Administration

REVIEWED AND APPROVED BY:



Sarai Bhaga (Aug 26, 2025 12:24:59 PDT)

SARAI BHAGA, Chief Financial Officer
Bureau of Sanitation

Date: _____

Prepared by:

Todd Cromwell, Hyperion Water Reclamation Plant (HWRP)
(310) 648-5912

DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION
BUREAU OF CONTRACT ADMINISTRATION
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MAY 12, 2021

ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California

MAY 12 2021


Executive Officer
Board of Public Works

CD: ALL

AUTHORITY TO DISTRIBUTE A REQUEST FOR QUALIFICATIONS, NEGOTIATE AND ESTABLISH TWO ON-CALL LISTS OF CONTRACTORS (SMALL AND LARGE WORK PACKAGES) FOR LANDSCAPE AND SITE SERVICES FOR LA SANITATION AND ENVIRONMENT'S CLEAN WATER, ENVIRONMENTAL QUALITY, SOLID RESOURCES, AND WATERSHED PROTECTION PROGRAMS (VARIOUS WORK ORDERS) - COMMUNITY LEVEL CONTRACTING

RECOMMENDATIONS

Authorize the Director and General Manager of LA Sanitation and Environment (LASAN) or his designee to:

1. Distribute and advertise the transmitted Request for Qualifications (RFQ) for Landscape and Site Services to establish two On-Call lists of contractors for small and large work packages for landscape and site services for all of LASAN's facilities.
2. Evaluate the Statements of Qualifications (SOQs) and select the most qualified proposers based on established rating criteria.
3. Negotiate contracts with the most qualified proposers.
4. Return to the Board of Public Works (Board) for authority to award and execute the negotiated contracts, subject to Mayor and City Council Approval.
5. Establish ranking for the most qualified proposers by random drawing in order to create the initial On-Call contractor lists.

TRANSMITTALS

1. Copy of the RFQ and attachment package for On-Call contractor services to provide landscaping and site services for all of LASAN's facilities.
2. Copy of the Business Inclusion Program Outreach waiver issued by the Mayor's Office of Budget and Innovation on March 26, 2020.

DISCUSSION

Background

LASAN owns and operates four (4) Water Reclamation Plants, more than 40 Clean Water Conveyance facilities, Environmental Quality Program facilities, several Solids Resources facilities, and various facilities under the Watershed Protection Program. These facilities require landscaping and site services such as tree trimming, maintenance of water features and irrigation systems, renovation projects utilizing native and drought tolerant plants, site hardscape, landscape repair, and other types of landscape and site services.

Existing staff cannot adequately perform the required landscaping and site services work at all the facilities owned by LASAN because of the broad scope of work and specialized skills, licenses, and certifications required to perform the work. As a result, LASAN is proposing to utilize the services of On-Call contractors to meet these specialized needs, where long-term staffing is not feasible and existing staffing is not available or able to perform these required tasks. Therefore, LASAN seeks to establish two new On-Call lists of landscape and site services contractors to provide services on an as-needed basis: one for work packages less than or equal to \$50,000; and the other for work packages over \$50,000). Proposers submitting SOQs are required to select which one of the two On-Call lists they wish to be placed on at the time their SOQs are submitted. LASAN is developing two on-call lists to attract both large companies that can provide a wide array of specialized services to serve the needs of most or all LASAN facilities, while providing work packages that are suitable for emerging and small businesses so they can gain entry to the City's contracting environment.

Scope of On-Call Landscape and Site Services

LASAN plans to utilize On-Call landscape and site services contractors to provide the following services:

General Landscape/Hardscape Maintenance Services

- General landscape care;
- Maintenance and care of hardscape areas, earthen pathways, and facility amenities;
- Brush clearance;
- Soil conditioning; and
- Hydro-seeding applications.

Landscape Feature Maintenance, Construction and Repair

- Renovation and maintenance of natural and manmade water bodies, water features, dry wells, bioswales, permeable walkways, etc.;
- Landscape features construction, renovation, and repair;
- Site hardscape/concrete repair and replacement;
- Irrigation system installation, renovation and repair; and
- Construction site debris clean up, off site recycling and/or disposal of non-recyclable materials.

Tree Trimming

- Professional tree pruning/shaping, plant material trimming, and off-site recycling of green

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waste.

Nursery Support

- Plant material propagation, nursery plant care, and irrigation management.

Professional Landscape Architectural Services

- As needed professional landscape architectural services of water features, lakes, ponds, dry wells, etc.;
- Design of water gardens; and
- Design of stormwater capture landscapes integral features.

Herbicide and Pesticide Services

- Services of a State of California licensed pest control advisor; and
- Agency reporting and record accountability of pesticide, herbicide, and fungicide applications.

Projects awarded to the contractors on the On-Call list will be a combination of these services. In performing services, Contractors shall adhere to the City's General Conditions and Requirements (if applicable), specific work packages, plans, technical specifications, and other related policies.

Cost Ceiling and Term of Contracts

The On-Call Landscape and Site Services contractors will be used on a rotating basis. The contract(s) terms will be 5 years with two optional 2-year extensions. The total combined contract ceiling for the 9-year term is estimated to be approximately \$14.4 million (\$1.6 million annually).

Selection Process and Criteria

The Evaluation Criteria summarized below will be used in evaluating the Proposers' SOQs to determine which Proposers are deemed most qualified for the successful performance of the type of services that will be outlined in the RFQ. The evaluation committee will review the SOQ packages according to the criteria set forth in the RFQ (see Table 1 below). Proposers must receive a passing score of 70 points or more to be considered for placement on one of the two On-Call lists. An On-Call list with a maximum of ten (10) Proposers will be established for small work packages of less than or equal to \$50,000, and an On-Call list with a maximum of ten (10) Proposers will be established for large work packages greater than \$50,000. LASAN will then proceed with negotiations with the selected Proposers, and the negotiated contracts will then be submitted to the Board, Mayor, and the City Council for approval.

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Table 1 – Evaluation Criteria

Criteria	Evaluation/Maximum Possible Points
Pass/Fail Criteria	
Part 1 – Proposer's Profile	
Minimum years in business	Pass/Fail
Meet minimum insurance requirements	Pass/Fail
Possess required licenses and professional registrations	Pass/Fail
Must not be subject to a termination for default, and criminal conviction	Pass/Fail
Qualitative Criteria	
Part 2 – Technical Qualifications and Past Experience - Understanding and approach to implementing Landscaping and Site Services work as outlined in the RFQ - Experience of the Proposer - Experience providing Landscaping and Site Services for the City of Los Angeles, and public and private entities	40
Part 3 - Past Performance - Quality of Work - Timely completion of assigned tasks - Record keeping - Safety Record - References	30
Part 4 – Cost Control - Hourly Rates - Overhead and Profit Rates - Personnel Utilization (Levels and number of personnel assigned to work packages).	30
TOTAL	100

Assignment of Work

Selected contractors will be placed in random order on either the small work package list or large work package list, according to their preference as noted in their SOQs. Assignment of

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Projects under these contracts will generally be done in one of the following manners noted below:

- For Large Projects with an estimated cost greater than \$50,000, the City will issue a Task Order Solicitation (TOS) describing the Project Scope and will request the top three (3) Contractors on the list to submit proposals in response to the TOS. For each desired Project Scope, the project will be awarded to the On-Call Contractor whose proposal represents the best overall value to the City for the requested work. The selected Contractor will be moved to the bottom of the list for the purpose of subsequent work assignments. Once an agreement is reached, the City will issue a "Notice to Proceed." If an agreement cannot be reached with the first Contractor, the City reserves the right to negotiate with the next Contractor on the list and so on until an agreement is reached.
- For Small Projects equal to or less than \$50,000, the City will issue a Task Order Solicitation to the first Contractor on the list qualified to perform the work. Negotiations will follow on the terms for the project, specifically on the scope of work, deliverables, schedule, and costs. If an agreement cannot be reached with the first Contractor, the Contractor will be rotated to the bottom of the list for the purpose of subsequent work assignments. The City reserves the right to negotiate with the next qualified Contractor on the list and so on until an agreement is reached. The successful Contractor will then be rotated to the bottom of the list for the purpose of subsequent work assignments. Once an agreement is reached, the City will issue a "Notice to Proceed."

The City reserves the right to advertise any Project regardless of size to all Contractors on the appropriate list. Additionally, and under urgent and special conditions, the City may choose to award the Project regardless of the size to the first ranked Contractor on the appropriate list.

Rationale for Using an RFQ

The RFQ process is being used to create two On-Call lists of qualified contractors for landscaping and site services – one for large projects (greater than \$50,000) and one for small projects (less than or equal to \$50,000). The list for small projects will allow small contractors to work as prime contractors, and help them grow and expand their businesses. An evaluation committee of LASAN staff will review SOQ packages to determine which proposals will bring the greatest benefits to the City.

Compliance with City Policies and Directives

All Contractors will be required to comply with the following City of Los Angeles policies:

- Business Tax Registration Certificate
- Non-Discrimination, Equal Employment Practices, and Affirmative Action Program
- Insurance Requirements
- Equal Benefits Ordinance
- Child Support Obligations Ordinance
- Americans with Disabilities Act
- Worker Retention and Living Wage Ordinances

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- Prevailing Wage Requirements
- Apprentice Utilization for Contracts Valued at \$30,000 or greater
- Slavery Disclosure Ordinance
- Non-Collusion Affidavit
- Municipal Lobbying Ordinance
- First Source Hiring Ordinance
- City of Los Angeles Contract History
- Los Angeles Residence Information
- Contract Bidder Campaign Contribution and Fundraising Restrictions
- Iran Contracting Act of 2010 Compliance Affidavit
- City Contractor's Use of Criminal History for Consideration of Employment Applications

Failure to comply with all requirements specified in these Ordinances will render the Contractor's contract subject to termination pursuant to the conditions expressed therein. Attachments and forms pertaining to the above listed requirements and policies are included with the RFQ.

Disclosure of Border Wall Contracting Ordinance

Contractors shall comply with Los Angeles Administrative Code Section 10.50 et seq., "Disclosure of Border Wall Contracting". City may terminate these contracts at any time if City determines that the Contractors failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

Business Inclusion Program (BIP) Requirements - for Proposals for Large Projects (greater than \$50,000)

In compliance with the Mayor's Executive Directive No. 14, issued on January 12, 2011, it is the policy of the City of Los Angeles to provide Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Small Business Enterprise (SBE), Emerging Business Enterprise (EBE), Disabled Veteran Business Enterprise (DVBE), Lesbian, Gay, Bisexual, Transgender Business Enterprise (LGBTBE), and Other Business Enterprises (OBE) subcontractors an equal opportunity to participate in the performance of City Contracts. Those proposers who submit SOQs for the large projects must adhere to the BIP requirements. For the large projects, the City has set overall, anticipated participation levels of 18% MBE, 4% WBE, 10% SBE, 5% EBE, and 2% DVBE and 0% LGBTBE respectively.

BIP Outreach- for Proposals for Small Projects (equal to or less than \$50,000)

Due to the size and value of the projects, BIP outreach for the small projects may not produce a reasonable level of participation by MBE, WBE, SBE, EBE, DVBE, LGBTBE, and OBE firms. Therefore, the Mayor's Office waived the BIP outreach requirements on March 26, 2020 for the proposers who select to be placed on the small work package list.

Local Business Preference Program (LBPP) Requirements

All proposers are eligible to participate in the LBPP by qualifying as a Local Business Enterprise (LBE). The City shall grant eight percent (8%) of the total possible evaluations points added to their evaluation score to those proposers who are certified as an LBE firm. The preference allowed by the Ordinance for the utilization of certified LBE subcontractors will not be applied to

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the evaluation process because specific subcontractor utilization cannot be pledged at the time of the RFQ submission.

Advertising and Distributing the RFQ

Upon authorization by the Board, the RFQ and attachments will be posted on, and can be downloaded from, the City of Los Angeles Business Assistance Virtual Network (BAVN) website-at <http://www.labavn.org>, in compliance with City Council Motion 95-1060-52.

Notification of Intent

The required Notification of Intent to Contract was filed on September 7, 2016 with the CAO Clearinghouse for this proposed Request for Qualifications.

Charter Section 1022

On September 29, 2016, the Personnel Department determined that City employees do not have the expertise to perform all of the work proposed to be contracted and that work assignments exceed staffing availability.

Peak Hour Construction and Right-of-Way Obstruction Regulations

All contractors must comply with the requirements specified in the Los Angeles Municipal Code (L.A.M.C.) Section 62.61 related to peak hour traffic restrictions, unless an exemption from the Peak Traffic Hours Prohibition is approved.

Contractor Responsibility Ordinance

All contractors participating in this program are subject to compliance with the requirements specified in the City of Los Angeles' Contractor Responsibility Ordinance No. 173677, (Article 14, Chapter 1, Division 10, Los Angeles Administrative Code). Failure to comply with all requirements specified in the Ordinance will render the bidders' contracts subject to termination pursuant to the conditions expressed therein.

Contractor Performance Evaluation

In accordance with Article 13, Chapter 1, Division 10 of the City of Los Angeles Administrative Code, the appropriate City personnel responsible for the quality control of these contracts shall submit Contractor Performance Evaluation Reports to the Bureau of Contract Administration upon completion of the work specified in the contracts.

Compliance with Board RFQ Policy

As per Board policy, this RFQ will be delivered to the Secretary of the Board prior to Board consideration thereof.

Contract Administration

The responsibility for the administration and management of these contracts will rest with the Hyperion Water Reclamation Plant (HWRP).

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PROJECT REVIEW BY DIRECTOR (PRD) APPROVAL

The overall budget of the project was approved by PRD on September 14, 2016 in the amount of \$14,400,000.

STATUS OF FINANCING

There is no impact to the General Fund. The total funding for this project is not to exceed \$14,400,000. Additional funding information will be provided at the time of contract award.

FUTURE ACTIONS

Upon Board authorization, the RFQ and attachments will be posted on www.labavn.org.

Following receipt and review of the SOQ packages, LASAN will develop two (2) On-Call lists of contractors, one for small work packages and another for large work packages, negotiate contracts with the selected firms, and return to the Board for authority to award and execute contracts with the selected proposers.

Respectfully submitted,



ENRIQUE C. ZALDIVAR, P.E.
Director and General Manager
Bureau of Sanitation

COMPLIANCE REVIEW PERFORMED
AND APPROVED BY:

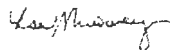


LYNDA McGLINCHEY, Program Manager II
Office of Contract Compliance
Bureau of Contract Administration



JOHN L. REAMER JR.
Inspector of Public Works
Bureau of Contract Administration

REVIEW AND APPROVED BY:



Digitally signed by Lisa B. Mowery
DN: cn=Lisa B. Mowery, email=lisa.mowery@labavn.org, c=US
Date: 2020.11.02 13:12:09 -0800

LISA B. MOWERY, P.E., Chief Financial Officer
Bureau of Sanitation
Date: 11/2/2020

Prepared by:
Amelito Biboso, HWRP
(310) 648-5008

CONTRACT NO. C- _____

**SERVICE AGREEMENT BETWEEN
THE CITY OF LOS ANGELES
AND
YUNSOO KIM DESIGN, INC.
FOR
LA SANITATION ENVIRONMENTAL LANDSCAPING
AND SITE SERVICES**



City of Los Angeles
Department of Public Works
Los Angeles Sanitation and Environment

Barbara Romero, Director and General Manager
Nicole Bernson, Assistant Director

Hyperion Water Reclamation Plant (HWRP)
Hi Sang Kim, Acting Plant Manager

LA SANITATION ENVIRONMENTAL LANDSCAPING AND SITE
SERVICES

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LA SANITATION ENVIRONMENTAL LANDSCAPING AND SITE
SERVICES

This AGREEMENT, made and entered into by and between the City of Los Angeles, a municipal corporation acting by order of and through its Board of Public Works (hereinafter called the "CITY") and YUNSOO KIM DESIGN, INC. (hereinafter referred to as "CONTRACTOR "); is set forth as follows:

W I T N E S S E T H

WHEREAS, the CITY has a need for landscaping and site services at Department of Public Works, Bureau of Sanitation (LASAN) facilities; and

WHEREAS, the CITY is committed to maintaining, preserving, and upgrading its landscapes and sites; and

WHEREAS, the CONTRACTOR'S services are deemed to be vital to meet the CITY's commitment to maintain, preserve, and upgrade its landscapes and sites; and

WHEREAS, the CITY plans to utilize YUNSOO KIM DESIGN, INC. to provide architectural landscaping services, during the course of a nine (9)-year period (five years and two 2-year renewal options); and

WHEREAS, on May 12, 2021, the Board of Public Works authorized the Bureau of Sanitation (LASAN) to distribute a Request for Qualifications (RFQ) for Landscaping and Site services and to negotiate a contract with a qualified proposer; and

WHEREAS, on August 4, 2021, LASAN received seven (7) proposals in response to the RFQ; and

WHEREAS, YUNSOO KIM DESIGN, INC. was deemed a qualified proposer with the experience and expertise necessary to perform said services as determined by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, YUNSOO KIM DESIGN, INC. meets the state licensing requirements to perform professional landscape architectural services; and

WHEREAS, the services to be provided by YUNSOO KIM DESIGN, INC. are of an expert and technical nature; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the terms and conditions of this AGREEMENT, it is understood and agreed by and between the parties hereto as follows:

ARTICLE 1 – CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this CONTRACT have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this CONTRACT. The language of this CONTRACT shall be construed according to its fair meaning and not strictly for or against the CITY or CONTRACTOR. The word "CONTRACTOR" includes the party or parties identified in this CONTRACT. The singular shall include the plural and if there is more than one CONTRACTOR, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

ARTICLE 2 – DEFINITIONS

It is understood that the following words and phrases are used herein; each shall have the meaning set forth opposite the same:

AGREEMENT/CONTRACT	This contractual agreement between the CITY and YUNSOO KIM DESIGN, INC. for landscape architectural design services.
BOARD	The Board of Public Works of the City of Los Angeles.
CALENDAR DAYS	Each day beginning at 12:01 a.m. and ending twenty-four (24) hours thereafter at 12:00 midnight.
CITY	The City of Los Angeles, Board of Public Works or its subordinate Bureaus. Depending on the context in which it is used, the term CITY may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles who is authorized to represent the City of Los Angeles in manners concerning this document.
CITY PROJECT MANAGER	The CITY'S designated representative for all issues related to this AGREEMENT
CONTRACTOR / CONSULTANT	YUNSOO KIM DESIGN, INC.
CONTRACTOR SERVICES	All services to be provided by the CONTRACTOR specified in this AGREEMENT

DIRECTOR	Director of LASAN or his/her designated representative
LARGE WORK PACKAGE	Project valued at greater than \$50,000
LASAN	Bureau of Sanitation, Department of Public Works, City of Los Angeles
MBE/WBE/SBE/EBE/DVBE/OBE	Minority/Women/Small/Emerging/Disabled Veteran/Other Business Enterprises
NOTICE TO PROCEED	Notice from the CITY to the CONTRACTOR to begin the project
SAFETY DATA SHEET (SDS)	Lists hazardous properties, protective measures, and the safe handling of individual chemicals
SMALL WORK PACKAGE	Project valued at \$50,000 and less
SUBCONTRACTOR	An individual or company having an agreement with the CONTRACTOR to provide services, equipment, or materials to the CONTRACTOR
TASK ORDER SOLICITATION (TOS)	Describes project scope with a request for CONTRACTOR(S) to submit a proposal
WORK PACKAGE	A Work Package is a defined Task Order Solicitation (TOS) to perform services with a specified duration

ARTICLE 3 – PROJECT DESCRIPTION

LASAN owns and operates four (4) Water Reclamation Plants, more than 40 Clean Water Conveyance facilities, and various other facilities under the Watershed Program. These facilities require landscaping and site services such as tree trimming, maintenance of water features and irrigation systems, renovation projects utilizing native and drought tolerant plants, site hardscape, landscape repair, landscape architecture, and other types of landscape and site services. Such services are vital to continually upkeep and modernize City facilities.

ARTICLE 4 – RESPONSIBILITIES OF AND SERVICES/TASKS TO BE PERFORMED BY THE CONTRACTOR

- 4.1 The CONTRACTOR shall perform the services described in Article 4.4 [SCOPE OF SERVICES ARTICLE]. The CONTRACTOR shall perform such work with a degree of skill and diligence normally employed by professional landscape architects performing the same or similar services.
- 4.2 The CONTRACTOR warrants that the services will be performed consistent with generally accepted industry standards and that all services shall be performed in accordance with the specific WORK PACKAGE, plans, technical specifications, and other related documents.
- 4.3 Maintenance of Records:

The CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this CONTRACT, in their original form or as otherwise approved by the CITY. These records shall be retained for a period of no less than four (4) years from the later of the following: (1) the final payment made by the CITY, (2) the expiration of this CONTRACT, or (3) termination of this CONTRACT. The records will be subject to examination and audit by authorized CITY personnel or the CITY'S representatives at any time. The CONTRACTOR shall provide any reports requested by the CITY regarding the performance of this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, the CONTRACTOR may, upon the CITY'S written approval, submit the required information to the CITY in an electronic format, e.g. USB flash drive, at the expiration or termination of this CONTRACT.

4.4 Scope of Services

Services shall include, but not limited to, the following:

A. Professional Landscape Architectural Services:

- As-needed professional landscape architectural services
- Design landscaping, water features, lakes, ponds, dry wells, bioswales, rain gardens, permeable surfaces
- Design water gardens utilizing reclaimed water and/or potable water, drought tolerant and water-wise landscapes
- Design stormwater capture landscapes integral features and storage

- Designs to be in adherence to City of Los Angeles Landscape Standards and Specifications.

Work in all service categories shall be performed in accordance with the specific WORK PACKAGES, plans, technical specifications, and other related documents.

Services shall be performed under one of the following WORK PACKAGE categories:

- SMALL WORK PACKAGE: Services less than or equal to \$50,000 for the duration of the work or CONTRACT
- LARGE WORK PACKAGE: Services greater than \$50,000 for the duration of the work or CONTRACT

CONTRACTORS were required to select a WORK PACKAGE category when completing their Statement of Qualification (SOQ). YUNSOO KIM DESIGN, INC. selected the SMALL WORK PACKAGE.

A WORK PACKAGE is awarded pursuant to a defined Task Order Solicitation (TOS) to perform services for a specified duration. WORK PACKAGES can either be a project requiring routine work to last for the duration of the CONTRACT or an "As-Needed" type WORK PACKAGE that can be completed in days, weeks, months, or years. Contractors cannot perform services outside of their selected category, unless specifically requested by the CITY in writing, based on the CITY's particular needs.

It is the intention of CITY to establish an on-call rotating list under each WORK PACKAGE category with a maximum of ten (10) CONTRACTORS each. CONTRACTORS will be placed in random order to initially establish an on-call list under each WORK PACKAGE category.

Assignment of Work

For SMALL WORK PACKAGES equal to or less than \$50,000, the CITY will issue a TOS to the first CONTRACTOR on the list qualified to perform the work. Negotiations on the terms for the project will follow, specifically on the scope of work, deliverables, schedule, and costs. If an agreement cannot be reached with the first CONTRACTOR, the CONTRACTOR will be rotated to the bottom of the list for the purpose of subsequent work assignments. The CITY reserves the right to negotiate with the next qualified CONTRACTOR on the list and so on until an agreement is reached. The successful CONTRACTOR will then be rotated to the bottom of the list for the purpose of subsequent work assignments. Once an agreement is reached, the CITY will issue a NOTICE TO PROCEED. If an agreement cannot be reached with the first CONTRACTOR that submits a proposal, the CITY reserves the right to negotiate with the next CONTRACTOR that submitted a proposal and so on until an agreement is

reached. Under special circumstances, including where no CONTRACTOR responds to a TOS, the CITY reserves the right to require one or more CONTRACTORS to submit a proposal in response to a TOS, and/or to award the project to any CONTRACTOR of its choosing, regardless of the size, that the CITY deems appropriate.

The CITY reserves the right to advertise any project regardless of size to all CONTRACTORS on the appropriate list. Additionally, and under urgent and special conditions, the CITY may choose to award the project to any CONTRACTOR of its choosing, regardless of the size, that the CITY deems appropriate.

4.5 CONTRACTOR Schedule of Services and Costs:

POSITION	RATE (\$/HR.)
Principal	\$79.61
Senior Landscape Designer	\$35.01
Landscape Designer	\$25.00

ARTICLE 5 – KEY CONTRACTOR PERSONNEL

- 5.1 The CONTRACTOR designates the following person to represent the CONTRACTOR in all matters pertaining to this AGREEMENT:

Name, Title: Yunsoo Kim, Principal
Address: 2629 Foothill Blvd. #204
La Crescenta, CA 91214
Telephone: (213) 220-9699
E-mail: yunsoo@yunsookimdesign.com

Additional technical specialists shall be assigned subject to the CITY PROJECT MANAGER'S approval.

- 5.2 The CONTRACTOR agrees that personnel assigned to these positions at the commencement of services under this AGREEMENT shall serve in these positions as long as required by the CONTRACT, and the CONTRACTOR shall not change personnel assigned to these positions without the prior written consent and approval of the CITY'S PROJECT MANAGER, whose consent shall not be withheld unreasonably.

- 5.3 Unless otherwise approved by the CITY, the CONTRACTOR shall use its own employees to perform the services described in this CONTRACT. The CITY has the right to review and approve any personnel who are assigned to work under this CONTRACT. The CONTRACTOR shall remove personnel from performing work under this CONTRACT if requested to do so by the CITY.
- 5.4 The CONTRACTOR shall not use SUBCONTRACTORS to assist in the performance of this CONTRACT without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, the CONTRACTOR shall remain

responsible for performing all aspects of this CONTRACT and paying all SUBCONTRACTORS. The CITY has the right to approve the CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of any SUBCONTRACTOR. The CITY does not have any obligation to pay the CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and any SUBCONTRACTOR.

ARTICLE 6 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

The CITY designates Todd Cromwell as its CITY PROJECT MANAGER to represent the CITY in all matters within the scope of this AGREEMENT relating to the conduct and approval of the work to be performed. Whenever the term "approval of CITY," "consult with CITY," "confer with CITY," or similar terms are used, they shall refer to the CITY PROJECT MANAGER. The CITY PROJECT MANAGER may designate an assistant to act in his/her stead. The CITY may designate another CITY employee to succeed Todd Cromwell as the CITY PROJECT MANAGER. The CONTRACTOR will be notified in writing in such event.

The CITY shall furnish, without charge, facilities and resources available to the CONTRACTOR as deemed reasonably necessary and appropriate by the CITY.

ARTICLE 7 – TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

The term of this AGREEMENT shall be for five (5) years with two (2) two-year renewal options, to be exercised at the CITY's sole discretion, from the date of full execution unless terminated as provided under Article 9 [TERMINATION ARTICLE] or extended by a duly approved amendment to this AGREEMENT and signed by the parties.

Unless otherwise provided, this CONTRACT shall take effect when all of the following events have occurred:

- A. This CONTRACT has been signed on behalf of the CONTRACTOR by the person or persons authorized to bind the CONTRACTOR;
- B. This CONTRACT has been approved by the City Council or by the BOARD, officer, or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this CONTRACT as to form; and
- D. This CONTRACT has been signed on behalf of the CITY by the person designated by the City Council, or by the BOARD, officer, or employee authorized to enter into this CONTRACT.

ARTICLE 8 – SUSPENSION

At the CITY'S sole discretion, the CITY may suspend any or all services provided under this CONTRACT by providing the CONTRACTOR with a written notice of suspension. Upon receipt of the notice of suspension, the CONTRACTOR shall immediately cease the services suspended and shall not incur any additional obligations, costs, or expenses to the CITY until the CITY gives written notice to recommence the services.

ARTICLE 9 – TERMINATION

9.1 Termination for Convenience

The CITY may terminate this CONTRACT, in whole or in part, for the CITY'S convenience at any time by providing the CONTRACTOR thirty days (30) written notice. Upon receipt of the notice of termination, the CONTRACTOR shall immediately take action not to incur any additional obligations, costs, or expenses, except as may be necessary to terminate its activities. The CITY shall pay the CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by the CONTRACTOR to effect the termination. Thereafter, the CONTRACTOR shall have no further claims against the CITY under this CONTRACT. All finished and unfinished documents and materials procured for or produced under this CONTRACT, including all intellectual property rights the CITY is entitled to, shall become CITY property upon the date of the termination. The CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

9.2 Termination for Breach of Contract

9.2.1 Except as provided in Article 21 [FORCE MAJEURE/EXCUSABLE DELAYS ARTICLE], if the CONTRACTOR fails to perform any of the provisions of this CONTRACT or so fails to make progress as to endanger timely performance of this CONTRACT, the CITY may give the CONTRACTOR written notice of the default. The CITY'S default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of the CITY. Additionally, the CITY'S default notice may offer the CONTRACTOR an opportunity to provide the CITY with a plan to cure the default, which shall be submitted to the CITY within the time period allowed by the CITY. At the CITY'S sole discretion, the CITY may accept or reject the CONTRACTOR'S plan. If the default cannot be cured or if the CONTRACTOR fails to cure within the period allowed by the CITY, then the CITY may terminate this CONTRACT due to the CONTRACTOR'S breach of this CONTRACT.

9.2.2 If the default under this CONTRACT is due to the CONTRACTOR'S failure to maintain the insurance required under this CONTRACT, the CONTRACTOR shall immediately: (1) suspend performance of any services under this CONTRACT for which insurance was required; and (2) notify its employees and SUBCONTRACTORS of the loss of insurance coverage and the CONTRACTOR'S obligation to suspend performance of services. The CONTRACTOR shall not recommence performance until the CONTRACTOR is fully insured and in compliance with the CITY'S requirements.

9.2.3 If a federal or state proceeding for relief of debtors is undertaken by or against the CONTRACTOR, or if the CONTRACTOR makes an assignment for the benefit of creditors, then the CITY may immediately terminate this CONTRACT.

9.2.4 If the CONTRACTOR engages in any dishonest conduct related to the performance or administration of this CONTRACT or violates the CITY'S laws, regulations, or policies relating to lobbying, then the CITY may immediately terminate this CONTRACT.

9.2.5 Acts of Moral Turpitude

a) The CONTRACTOR shall immediately notify the CITY if the CONTRACTOR or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").

b) If the CONTRACTOR or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to an Act of Moral Turpitude, the CITY may immediately terminate this CONTRACT.

c) If the CONTRACTOR or a Key Person is charged with or indicted for an Act of Moral Turpitude, the CITY may terminate this CONTRACT after providing the CONTRACTOR an opportunity to present evidence of the CONTRACTOR'S ability to perform under the terms of this CONTRACT.

d) Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in the California Public Resources Code

Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elder abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e) For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this CONTRACT, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of the CONTRACTOR.

9.2.6 In the event the CITY terminates this CONTRACT as provided in this section, the CITY may procure, upon such terms and in the manner as the CITY may deem appropriate, services similar in scope and level of effort to those so terminated and the CONTRACTOR shall be liable to the CITY for all of its costs and damages, including, but not limited to, any excess costs for such services.

9.2.7 If, after notice of termination of this CONTRACT under the provisions of this section, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this section or that the default was excusable under the terms of this CONTRACT, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.

9.2.8 The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT.

9.2.9 In the event that this CONTRACT is terminated, the CONTRACTOR shall immediately notify all employees and SUBCONTRACTORS and shall notify in writing all other parties contracted with under the terms of this CONTRACT within five (5) working days of the termination.

ARTICLE 10 – SUBCONTRACT APPROVAL

All subcontracts that are one half of one percent (0.5%) of the total CONTRACT amount or \$10,000, whichever is greater, shall require the prior approval of the CITY. A copy of all subcontracts shall be submitted to the CITY PROJECT MANAGER showing the SUBCONTRACTOR'S name and dollar amount of each subcontract. Wholly-owned subsidiaries of the CONTRACTOR shall not be considered SUBCONTRACTORS/ SUBCONSULTANTS. The CONTRACTOR shall not substitute SUBCONTRACTORS listed in this AGREEMENT (Exhibit 01, Schedule A) without the prior written approval of the

CITY. The CONTRACTOR shall not add SUBCONTRACTORS to assist in the performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, the CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT. The CITY has the right to approve the CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of SUBCONTRACTORS. The CITY does not have any obligation to pay the CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS.

ARTICLE 11 - COMPENSATION, INVOICING, AND PAYMENT

Definitions:

- 11.1 "Cost" as used in this Article is defined as the sum of: (1) Hourly Billing Rates; (2) Overhead (3) Profit; (4) Markup (Other Direct Costs and/or Subcontractor Expenses); as defined below. "Hourly Billing Rates" shall be at the rates approved by the CITY PROJECT MANAGER, to be charged by the CONTRACTOR for employees' time directly chargeable to their performance of the project work. Any adjustments to the CONTRACTOR'S Hourly Billing Rate shall be in accordance with established LASAN policies existing at the time the adjustment is approved. Hourly Billing Rate increases are limited to once per year, per employee, on the anniversary date of the CONTRACTOR'S AGREEMENT execution and are subject to the approval of the CITY. In no case shall the "Hourly Billing Rate" exceed the actual Hourly Rate paid to the employee.

Any adjustment to the SUBCONTRACTORS' salaries and Hourly Billing Rates shall be reviewed and approved by the CITY PROJECT MANAGER prior to invoicing. Adjustments to the SUBCONTRACTORS' salaries and Hourly Billing Rates may be increased one time per year, per employee, on the anniversary date of the CONTRACTOR'S AGREEMENT execution. Any such increases shall be in accordance with established LASAN policy at the time the adjustment is approved.

- 11.2 "Other Direct Cost" includes those costs of the CONTRACTOR directly identifiable to or incurred in the performance of services hereunder, including but not limited to reproduction, freight, messenger service, travel (in accordance with established CITY policies), equipment owned or rented by the CONTRACTOR (any equipment purchased and paid for under this project shall become the property of the CITY), auto mileage charges (based on IRS allowable amounts), materials, permits, third party inspection or evaluation fees, sales tax, and supplies used in the work. Communication expenses, cost of office space, equipment, and supplies furnished to CITY personnel at the CONTRACTOR'S

location shall be paid by the CITY. The CITY shall receive the full benefit of any free travel, frequent flyer mileage, discounts and/or any other advantages which are acquired by the CONTRACTOR as a result of CITY-sponsored travel.

- 11.3 "Subcontractor Expenses" shall be the actual amount paid by the CONTRACTOR to the SUBCONTRACTOR for their services to the CITY plus an administrative fee of five percent (5%),
- 11.4 "Profit" shall be limited to five percent (5%) and shall be applied to the "Hourly Billing Rates" and "Materials and Supplies".
- 11.5 "Overhead" shall be five percent (5%).
- 11.6 "Markup" shall be five percent (5%) applied to "Subcontractor Expenses" and "Other Direct Costs".

Table 1.

LASAN	Overhead Rate	Profit (%)	Mark-up	
			Subcontractor	Direct Costs
LASAN (Original)	10%	5%	10%	Cost + 10%
LASAN (Negotiated)	5%	5%	5%	Cost + 5%

- 11.7 Costs incurred by the CONTRACTOR prior to the actual date of full execution of this AGREEMENT shall only be payable to the CONTRACTOR if said costs were incurred in completing any task specifically authorized by this AGREEMENT and said costs are reviewed and approved by the CITY in writing and said approval for payment occurs after this AGREEMENT is fully executed. In no event shall interest be owed on any costs incurred prior to the actual date of full execution of this AGREEMENT.
- 11.8 Exhibit 16 [PROJECT SERVICES COST PROPOSAL], attached hereto and incorporated herein by this reference, shall be the format used for the estimated total cost by task for each Task Order. For Task Orders specifying a Cost Reimbursement Plus Profit compensation method, the Project Services Cost Proposal shall be based upon the estimated hours of labor at estimated direct labor rates, the allocated indirect expenses, other direct costs, and profit. For

Task Orders specifying a Lump Sum compensation method, the Project Services Cost Proposal shall set forth the total project cost and the appropriate payment milestones.

- 11.9 Hourly Billing Rate is a method of compensation whereby the CONTRACTOR is compensated on an hourly basis pursuant to established Hourly Billing Rates set forth in Exhibit 15 [fee schedule]. The hourly billing rates shall be approved by the CITY PROJECT MANAGER for the CONTRACTOR employees' time directly chargeable to their performance of the project work and includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the CONTRACTOR. Payments shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Project Task Order.
- 11.10 The CITY will not pay for the CONTRACTOR'S nor SUBCONTRACTOR'S personnel for invoice preparation. The CITY will not pay for the CONTRACTOR'S nor SUBCONTRACTOR'S communication expenses and computer time charges.

11.2.0 Compensation

The CONTRACTOR agrees to perform the work specified in Article 4 [RESPONSIBILITIES AND SERVICES/TASKS TO BE PERFORMED BY THE CONTRACTOR], and the CITY shall compensate the CONTRACTOR either on a Lump Sum basis, a Cost Reimbursement Plus Profit basis, or an Hourly Billing Rate basis upon mutual written agreement. The CITY shall designate the compensation method in the Task Orders to be issued under this AGREEMENT. If the Task Order specifies the compensation as being on a Cost Reimbursement Plus Profit or Hourly Billing Rate basis, payment shall be made in accordance with the Task Cost Estimates to be provided for CITY approval prior to issuance of Notice to Proceed for any task under this AGREEMENT. Hourly rates, SUBCONTRACTOR fees, and other direct/indirect charges shall be in accordance with rates set herein. Individuals who the CONTRACTOR wishes to add to the project must have their compensation rate approved by the CITY'S PROJECT MANAGER, and a revised Scope of Services must be prepared as evidence of this addition. The total cost ceiling shall be stated in the Task Order.

If the Task Order specifies the compensation as being on a Lump Sum basis, payment shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Task Order. The total cost ceiling shall be stated in the Task Order.

The total cost ceiling for this AGREEMENT is \$14,400,000.

11.3.1 Invoicing and Payment

11.3.2 For Task Orders specifying a Cost Reimbursement Plus Profit method of payment, the CONTRACTOR shall, once each month, submit to the CITY an original and three (3) copies of an invoice in a format acceptable to the CITY which will include all costs and a proportionate amount of profit due the CONTRACTOR for services provided during the preceding month. Payments shall be made upon the submission of a complete and accurate invoice and supporting documentation. The CITY shall review the CONTRACTOR'S invoice in accordance with the CITY's review procedures. The CITY shall make a good faith effort to process payments in a timely manner.

11.3.3 Invoices shall be prepared in such form and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be reasonably required by the CITY to establish the amount of such invoices as allowable expenses. The CONTRACTOR shall submit a Subcontractor Utilization Form, Exhibit 2 [Schedule B, MBE/WBE/SBE/EBE/DVBE/OBE UTILIZATION PROFILE], as part of the monthly invoice, listing current MBE/WBE/SBE/EBE/ DVBE/OBE amounts invoiced as part of the invoicing procedures. The CONTRACTOR must provide an explanation for any item that falls short of the planned utilization with specific plans and recommendations for recovering any shortfalls in utilization. No such invoices shall be paid without the Subcontractor Utilization Form attachment. All invoices shall be subject to audit for a period of four (4) years from the termination of this AGREEMENT.

11.3.4 The CITY shall not be obligated to reimburse the CONTRACTOR for costs incurred in excess of the [Project Services Cost Proposal] set forth. The CONTRACTOR shall not be obligated to continue performance (including actions under the temporary stop work or termination clauses) or otherwise incur costs in excess of the Project Services Cost Proposal unless and until the CITY shall have notified the CONTRACTOR in writing that such Project Services Cost Proposal has been increased and shall have specified in such notice an estimated Project Services Cost Proposal, which shall thereupon constitute the cost performance of this AGREEMENT. In the absence of the specified notice, the CITY shall not be obligated to reimburse the CONTRACTOR for any costs in excess of the Project Services Cost Proposal set forth, whether those costs were incurred during the course of the AGREEMENT or as a result of termination.

11.3.5 When and to the extent that the Project Services Cost Proposal has been

increased, any costs incurred by the CONTRACTOR in excess of the Project Services Cost Proposal for any Task Order, prior to such increase, shall be allowable to the same extent as if such costs had been incurred after the increase.

- 11.3.6 Notwithstanding any other provision of this CONTRACT, including any exhibits or attachments incorporated therein, and in order for the CITY to comply with its governing legal requirements, the CITY shall have no obligation to make any payments to the CONTRACTOR unless the CITY shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this CONTRACT. The CONTRACTOR agrees that any services provided by the CONTRACTOR, purchases made by the CONTRACTOR, or expenses incurred by the CONTRACTOR in excess of the appropriation(s) shall be free and without charge to the CITY and the CITY shall have no obligation to pay for the services, purchases, or expenses. The CONTRACTOR shall have no obligation to provide any services, provide any equipment, or incur any expenses in excess of the appropriated amount(s) until the CITY appropriates additional funds for this CONTRACT.
- 11.3.7 For Task Orders specifying a Lump Sum method of payment or the Hourly Billing Rate method, the CONTRACTOR shall submit to the CITY, upon the satisfactory completion of each task/milestone, an original and three (3) copies of an invoice in a format acceptable to the CITY. The CITY shall review the CONTRACTOR'S invoice and notify the CONTRACTOR of exceptions or disputed items and their dollar amount. The total invoice amount, less any exceptions or disputed items shall be considered approved by the CITY. The CITY shall pay the CONTRACTOR all amounts approved for payment after the CITY'S PROJECT MANAGER receives the CONTRACTOR'S invoice.
- 11.3.8 False Claims Act
The CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the California False Claims Act (Cal. Gov. Code 12650 et seq.), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

ARTICLE 12 – AMENDMENTS, CHANGES, OR MODIFICATIONS

All amendments, changes, or modifications to this CONTRACT shall be in writing and signed and approved pursuant to the provisions of Article 7 [TERM OF AGREEMENT AND TIME OF EFFECTIVENESS].

ARTICLE 13 – INDEMNIFICATION AND INSURANCE

13.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of the CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, the CONTRACTOR shall defend, indemnify, and hold harmless the CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including the CONTRACTOR'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by the CONTRACTOR, SUBCONTRACTORS, or

their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. This provision will survive expiration or termination of this CONTRACT.

13.2 INSURANCE

During the term of this CONTRACT and without limiting the CONTRACTOR'S obligation to indemnify, hold harmless, and defend the CITY, the CONTRACTOR shall provide and maintain at its own expense a program of insurance having the coverage and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 3 [INSURANCE CONTRACTUAL REQUIREMENTS EXHIBIT] hereto). The insurance must: (1) conform to the CITY'S requirements;(2) comply with the Insurance Contractual Requirements (Form General 146 in Exhibit 3 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. The CONTRACTOR shall comply with all Insurance Contractual Requirements shown on Exhibit 3 hereto. Exhibit 3 is hereby incorporated by reference and made a part of this CONTRACT.

13.3 BONDS Risk Manager Insurance Requirements (2023)

All bonds required by the CITY shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 et seq., as amended from time to time. CONTRACTOR will be required to submit proof of insurance and payment and performance bonds for 100% of the cost of the Work Package to the Board of Public Works. CONTRACTORS are required to submit these to the Board within 5 days of the issuance of the Work Package for approval by the City Administrative Officer's Risk Manager.

ARTICLE 14 – INDEPENDENT CONTRACTORS

The CONTRACTOR is an independent contractor and not as an agent or employee of the CITY. The CONTRACTOR shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY.

ARTICLE 15 – WARRANTIES AND RESPONSIBILITY OF CONTRACTOR

15.1 The CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within the CONTRACTOR'S profession, doing the same or similar work under the same or similar circumstances.

- 15.2 The CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the CONTRACTOR under this AGREEMENT. The CONTRACTOR shall, at no additional cost to the CITY, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, calculations, and other services.
- 15.3 The CONTRACTOR shall exhibit proper professional judgment in the use of information furnished by the CITY in Article 6 [RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY]. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, the CONTRACTOR will notify the CITY in a reasonable manner within three (3) business days after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.
- 15.4 The CONTRACTOR shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.
- 15.5 Except as specified in Article 13 [INDEMNIFICATION ARTICLE] and as otherwise provided in this AGREEMENT, the CONTRACTOR shall be and shall remain liable, in accordance with applicable law, for all damages to the CITY caused by the CONTRACTOR'S negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to the CITY, CITY-furnished data, or any third party (excepting any CONTRACTOR or SUBCONTRACTOR of any tier).

ARTICLE 16 - INTELLECTUAL PROPERTY INDEMNIFICATION

The CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the CITY, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by the CONTRACTOR, or its SUBCONTRACTORS, in performing the work under this CONTRACT; or (2) as a result of the CITY'S actual or intended use of any Work Product (as defined in Article 18

[OWNERSHIP AND LICENSE]) furnished by the CONTRACTOR, or its SUBCONTRACTORS, under this CONTRACT. The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. This provision will survive expiration or termination of this CONTRACT.

ARTICLE 17 – INTELLECTUAL PROPERTY WARRANTY

The CONTRACTOR represents and warrants that its performance of all obligations under this CONTRACT does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity, and/or proprietary information.

ARTICLE 18 – OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this CONTRACT including, without limitation, documents, materials, data, reports, manuals, specifications, artworks, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by the CONTRACTOR or its SUBCONTRACTORS under this CONTRACT (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of the CITY for its use in any manner the CITY deems appropriate. The CONTRACTOR hereby assigns to the CITY all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this CONTRACT. The CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

The CONTRACTOR agrees that a monetary remedy for breach of this CONTRACT may be inadequate, impracticable, or difficult to prove and that a breach may cause the CITY irreparable harm. The CITY may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude the CITY from seeking or obtaining any other relief to which the CITY may be entitled.

For all Work Products delivered to the CITY that are not originated or prepared by the CONTRACTOR or its SUBCONTRACTORS under this CONTRACT, the CONTRACTOR shall secure a grant, at no cost to the CITY, for a non-exclusive perpetual license to use such Work Products for any CITY purpose(s).

The CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the CITY.

Any subcontract entered into by the CONTRACTOR relating to this CONTRACT shall include this provision to contractually bind its SUBCONTRACTORS performing work under this CONTRACT such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein.

ARTICLE 19 – SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 28 [PROHIBITION AGAINST ASSIGNMENT OR DELEGATION].

ARTICLE 20 – CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION

All notices shall be made in writing and may be given by personal delivery, regular mail, or electronic mail. Notices sent by regular mail should be registered or certified and sent to the designated contact person for each party and addressed as follows:

To the CITY:

Contact Person: Todd Cromwell
Address: Hyperion Water Reclamation Plant
12000 Vista Del Mar
Playa Del Rey, CA 90293
Telephone: (310) 350-9172
E-mail: todd.cromwell@lacity.org

To the CONTRACTOR:

Contact Person: Yunsoo Kim
Address: 2629 Foothill Blvd. #204
La Crescenta, CA 91214
Telephone: (213) 220-9699
E-mail: yunsoo@yunsookimdesign.com

ARTICLE 21 – FORCE MAJEURE (EXCUSABLE DELAYS)

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this CONTRACT, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a SUBCONTRACTOR of the CONTRACTOR shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both the CONTRACTOR and SUBCONTRACTOR, and without any fault or negligence of either of them. In such case, the CONTRACTOR shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the SUBCONTRACTOR were obtainable from other sources in sufficient time to permit the CONTRACTOR to perform timely. As used in this CONTRACT, the term "SUBCONTRACTOR" means a subcontractor at any tier.

In the event the CONTRACTOR'S delay or failure to perform arises out of a Force Majeure Event, the CONTRACTOR agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

ARTICLE 22 – SEVERABILITY

Should any portion of this AGREEMENT be determined to be void or unenforceable, such shall be severed from the whole and the AGREEMENT will continue as modified.

ARTICLE 23 – DISPUTES

Should a dispute or controversy arise concerning provisions of this AGREEMENT or the performance of work hereunder, the parties may elect to submit such to a court of competent jurisdiction.

ARTICLE 24 – ENTIRE AGREEMENT

This AGREEMENT contains all of the agreements, representations, and understandings of the parties hereto and supersedes and/or incorporates any previous understandings, proposals, commitments, or agreements, whether oral or written, and may be modified or amended only as herein provided.

ARTICLE 25 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY, including but not limited to, laws regarding health and safety, labor and employment, wage and hours, and licensing. This CONTRACT and its performance shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. The CONTRACTOR shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this CONTRACT with no additional compensation paid to the CONTRACTOR.

In any action arising out of this CONTRACT, the CONTRACTOR consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term, or provision of this CONTRACT is held void, illegal, unenforceable, or in conflict with any federal, state, or local law or regulation having jurisdiction over this AGREEMENT, the validity of the remaining parts, terms, or provisions of this CONTRACT shall not be affected thereby.

ARTICLE 26 – CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

For the duration of this CONTRACT, the CONTRACTOR shall maintain valid Business Tax Registration Certificate(s) as required by the CITY'S Business Tax Ordinance, Section 21.1 et seq. of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

Should any such certificate(s) become suspended or revoked, it is the CONTRACTOR'S responsibility to report the matter immediately to the CITY PROJECT MANAGER.

ARTICLE 27 – WAIVER

A waiver of a default of any part, term, or provision of this CONTRACT shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

ARTICLE 28 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

The CONTRACTOR may not, unless it has first obtained the written permission of the CITY:

- A. Assign or otherwise alienate any of its rights under this CONTRACT, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this CONTRACT.

ARTICLE 29 – PERMITS

The CONTRACTOR and its directors, officers, partners, agents, employees, and SUBCONTRACTORS, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications, and other documents necessary for the CONTRACTOR'S performance of this CONTRACT and shall pay any fees required therefore. The CONTRACTOR certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to the CONTRACTOR'S performance of this CONTRACT.

ARTICLE 30 – BEST TERMS

Throughout the term of this CONTRACT, the CONTRACTOR shall offer the CITY the best terms, prices, and discounts that are offered to any of the CONTRACTOR'S customers for similar goods and services provided under this CONTRACT.

ARTICLE 31 – CLAIMS FOR LABOR AND MATERIALS

The CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this CONTRACT so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produced by the CONTRACTOR hereunder) and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this CONTRACT.

ARTICLE 32 – BREACH

Except for Force Majeure, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

ARTICLE 33 — MANDATORY PROVISIONS PERTAINING TO NON-DISCRIMINATION IN EMPLOYMENT

Unless otherwise exempt, this CONTRACT is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. The CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this CONTRACT, the CONTRACTOR shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status, or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this CONTRACT by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this CONTRACT by reference and will be known as the "Equal Employment Practices" provisions of this CONTRACT.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this CONTRACT by reference and will be known as the "Affirmative Action Program" provisions of this CONTRACT.

Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 34 — CHILD SUPPORT OBLIGATIONS ASSIGNMENT ORDERS

The CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, the CONTRACTOR shall fully comply with all applicable State and Federal employment reporting requirements. Failure of the CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of the CONTRACTOR to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this CONTRACT. Failure of the CONTRACTOR or principal owner to cure the default within ninety (90) days of the notice of default will subject this

CONTRACT to termination for breach. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 35 — LIVING WAGE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCES

35.1 LIVING WAGE ORDINANCE

The CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 et seq., as amended from time to time. The CONTRACTOR further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision. (Exhibit 5)
[DECLARATION OF COMPLIANCE WITH LIVING WAGE ORDINANCE EXHIBIT]

35.2 SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

The CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 36 — ACCESS AND ACCOMMODATIONS

The CONTRACTOR represents and certifies that:

- A. The CONTRACTOR shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 et seq., the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 et seq., the Fair Housing Act, and its implementing regulations and any subsequent amendments, and the California Government Code Section 11135;
- B. The CONTRACTOR shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. The CONTRACTOR shall provide reasonable accommodation upon request to ensure equal access to CITY-funded programs, services, and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and

- E. The buildings and facilities used to provide services under this CONTRACT are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

The CONTRACTOR understands that the CITY is relying upon these certifications and representations as a condition to funding this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 37 — CONTRACTOR RESPONSIBILITY ORDINANCE

The CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 et seq., as amended from time to time.

ARTICLE 38 — LOS ANGELES BUSINESS INCLUSION PROGRAM

Unless otherwise exempted prior to bid submission, the CONTRACTOR shall comply with all aspects of the Business Inclusion Program as described in the [Request for Qualifications (RFQ)], throughout the duration of this CONTRACT. The CONTRACTOR shall utilize the Regional Alliance Marketplace for Procurement (RAMP) at <https://www.rampla.org/s/> to perform and document outreach to Minority, Women, and Other Business Enterprises. The CONTRACTOR shall perform subcontractor outreach activities through RAMP. The CONTRACTOR shall not change any of its designated SUBCONTRACTORS or pledged specific items of work to be performed by these SUBCONTRACTORS, nor shall the CONTRACTOR reduce their level of effort, without prior written approval of the CITY.

ARTICLE 39 — DISCLOSURE ORDINANCES

Unless otherwise exempt in accordance with the provisions of this Ordinance, this CONTRACT is subject to the Slavery Disclosure Ordinance, Section 10.41 et seq., of the Los Angeles Administrative Code, as may be amended from time to time. The CONTRACTOR certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision. Exhibit 4 [SLAVERY DISCLOSURE ORDINANCE] is attached hereto and incorporated herein by this reference.

The CONTRACTOR shall comply with Los Angeles Administrative Code Section 10.50 et seq., 'Disclosure of Border Wall Contracting.' The City or the Department of Public

Works (DPW) may terminate this CONTRACT at any time if the City or DPW determines that the CONTRACTOR failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

ARTICLE 40 – CONTRACTOR PERFORMANCE EVALUATION ORDINANCE

At the end of this AGREEMENT, the CITY will conduct an evaluation of the CONTRACTOR'S performance. The CITY may also conduct evaluations of the CONTRACTOR'S performance during the term of the AGREEMENT. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the CONTRACTOR assigns to the AGREEMENT. A contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed fourteen (14) CALENDAR DAYS to respond. The CITY will use the final CITY evaluation, and any response from the CONTRACTOR, to evaluate proposals and to conduct reference checks when awarding other service contracts.

ARTICLE 41 – MUNICIPAL LOBBYING ORDINANCE

The CONTRACTOR for the CITY shall submit a certification, on a form prescribed by the City Ethics Commission, that the CONTRACTOR acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance, Exhibit 11 [MUNICIPAL LOBBYING ORDINANCE], if the CONTRACTOR qualifies as a lobbying entity under the Ordinance. The exemptions contained in Los Angeles Administrative Code Section 10.40.4 shall not apply to this subsection.

ARTICLE 42 – FIRST SOURCE HIRING ORDINANCE

The CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 43 – COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12) FOR MEASURE H/CONTRACTOR CONTRIBUTIONS/FUNDRAISING

Unless otherwise exempt, if this CONTRACT is valued at \$100,000 or more and requires approval by an elected CITY office, the CONTRACTOR, CONTRACTOR'S principals, and the CONTRACTOR'S SUBCONTRACTORS expected to receive at least \$100,000 for performance under this CONTRACT, and the principals of those SUBCONTRACTORS (the "Restricted Persons") shall comply with Charter Section 470(c)(12) and LAMC Section

49.7.35. Failure to comply entitles the CITY to terminate this CONTRACT and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected CITY officials or candidates for elected CITY office for twelve months after this CONTRACT is signed. Additionally, a CONTRACTOR subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any CONTRACTOR subject to Charter Section 470(c)(12) shall include the following notice in any contract with any SUBCONTRACTOR expected to receive at least \$100,000 for performance under this CONTRACT:

"Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # _____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles ("CITY") officials and candidates for elected CITY office for twelve months after the CITY Contract is signed. You are required to provide the names and contact information of your principals to the CONTRACTOR and to amend that information within ten business days if it changes during the twelve-month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

ARTICLE 44 — COMPLIANCE WITH THE IRAN CONTRACTING ACT OF 2010

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with the CITY for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit." (Exhibit XX)

ARTICLE 45 — INTEGRATED CONTRACT

This CONTRACT sets forth all of the rights and duties of the parties with respect to the subject matter of this CONTRACT and replaces any and all previous contracts or understandings, whether written or oral, relating thereto. This CONTRACT may be amended only as provided for in the provisions of Article 12 [AMENDMENTS, CHANGES, OR MODIFICATIONS] hereof.

ARTICLE 46 – DATA PROTECTION

- A. The CONTRACTOR shall protect, using the most secure means and technology that is commercially available, CITY-provided data or consumer-provided data acquired in the course and scope of this CONTRACT, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). The CONTRACTOR shall notify the CITY in writing as soon as reasonably feasible, and in any event within twenty-four (24) hours, of the CONTRACTOR'S discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. The CONTRACTOR shall begin remediation immediately. The CONTRACTOR shall provide daily updates, or more frequently if required by the CITY, regarding findings and actions performed by the CONTRACTOR until the Data Breach or Security Incident has been effectively resolved to the CITY'S satisfaction. The CONTRACTOR shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with the CITY. At the CITY'S sole discretion, the CITY and its authorized agents shall have the right to lead or participate in the investigation. The CONTRACTOR shall cooperate fully with the CITY, its agents, and law enforcement.
- B. If the CITY is subject to liability for any Data Breach or Security Incident, then the CONTRACTOR shall fully indemnify and hold harmless the CITY and defend against any resulting actions.

ARTICLE 47 – LOCAL BUSINESS PREFERENCE ORDINANCE

The CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 48 – CITY CONTRACTOR'S USE OF CRIMINAL HISTORY FOR CONSIDERATION OF EMPLOYMENT APPLICATIONS

The CONTRACTOR shall comply with the City Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 49 – COMPLIANCE WITH IDENTITY THEFT LAWS AND PAYMENT CARD DATA SECURITY STANDARDS

The CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to customers. The CONTRACTOR also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program, or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, the CONTRACTOR shall verify proper truncation of receipts in compliance with FACTA.

ARTICLE 50 – COMPLIANCE WITH CALIFORNIA PUBLIC RESOURCES CODE SECTION 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor if the person has been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, the CONTRACTOR shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by the CITY. The CONTRACTOR is required to have all employees, volunteers, and SUBCONTRACTORS (including all employees and volunteers of any SUBCONTRACTOR) of the CONTRACTOR working on the premises to pass a fingerprint and background check through the California Department of Justice at the CONTRACTOR'S sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

ARTICLE 51 – POSSESSORY INTERESTS TAX

Rights granted to the CONTRACTOR by the CITY may create a possessory interest. The CONTRACTOR agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, the CONTRACTOR shall pay the property tax. The CONTRACTOR acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

ARTICLE 52 – CONFIDENTIALITY

All documents, information, City Data (as that term is defined in Article 46) and materials provided to the CONTRACTOR by the CITY or developed by the CONTRACTOR pursuant to this CONTRACT (collectively "Confidential Information") are confidential. The CONTRACTOR shall not provide, and shall prohibit its employees and subcontractors from providing or disclosing, or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by the CITY or as required by law. The CONTRACTOR shall immediately notify the CITY of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this CONTRACT.

ARTICLE 53 – COUNTERPARTS

This AGREEMENT may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by the CITY) and sent by e-mail shall be deemed original signatures.

ARTICLE 54 – CONTRACTOR DATA REPORTING

If CONTRACTOR is a for-profit, privately owned business, CONTRACTOR shall, within 30 days of the effective date of the CONTRACT and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the CONTRACT), report the following information to CITY via the Regional Alliance Marketplace for Procurement ("RAMP") or via another method specified by CITY: Contractor's and any Subcontractor's annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner ("Contractor/Subcontractor Information"). CONTRACTOR shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by CITY.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year written below.

CITY OF LOS ANGELES

By: _____

YUNSOO KIM DESIGN, INC.

By: Yunsoo Kim

Title: Commissioner, Board of Public Works
Date: _____

Title: Owner/President _____
Date: _____

By: _____

Title: Commissioner, Board of Public Works

Date: _____

APPROVED AS TO FORM:

HYDEE FELDSTEIN SOTO, City Attorney

By: _____
Virginia Choi

Title: Deputy City Attorney

Date: _____

ATTEST:

PETTY F. SANTOS, Interim City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

CONTRACT NO. C- _____

**SERVICE AGREEMENT BETWEEN
THE CITY OF LOS ANGELES
AND
MOORE, IACOFANO, GOLTSMAN, INC. (MIG)
FOR
LA SANITATION ENVIRONMENTAL LANDSCAPING
AND SITE SERVICES**



City of Los Angeles
Department of Public Works
Los Angeles Sanitation and Environment

Barbara Romero, Director and General Manager
Nicole Bernson, Assistant Director

Hyperion Water Reclamation Plant (HWRP)
Hi Sang Kim, Acting Plant Manager

LA SANITATION ENVIRONMENTAL LANDSCAPING AND SITE
SERVICES

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Exhibit 02	Schedule B, MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile for Task/Project Work
Exhibit 03	Insurance Contractual Requirements
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LA SANITATION ENVIRONMENTAL LANDSCAPING AND SITE
SERVICES

This AGREEMENT, made and entered into by and between the City of Los Angeles, a municipal corporation acting by order of and through its Board of Public Works (hereinafter called the "CITY") and MOORE, IACOFANO, GOLTSMAN, INC. (MIG) (hereinafter referred to as "MIG" or "CONTRACTOR") is set forth as follows:

W I T N E S S E T H

WHEREAS, the CITY has a need for landscaping and site services at Department of Public Works, Bureau of Sanitation (LASAN) facilities; and

WHEREAS, the CITY is committed to maintaining, preserving, and upgrading its landscapes and sites; and

WHEREAS, the CONTRACTOR'S services are deemed to be vital to meet the CITY's commitment to maintain, preserve, and upgrade its landscapes and sites; and

WHEREAS, the CITY plans to utilize MIG to provide architectural landscaping services, during the course of a nine (9)-year period (five years and two 2-year renewal options); and

WHEREAS, on May 12, 2021, the Board of Public Works authorized the Bureau of Sanitation (LASAN) to distribute a Request for Qualifications (RFQ) for Landscaping and Site services and to negotiate a contract with a qualified proposer; and

WHEREAS, on August 4, 2021, LASAN received seven (7) proposals in response to the RFQ; and

WHEREAS, MIG was deemed a qualified proposer with the experience and expertise necessary to perform said services as determined by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, MIG meets the state licensing requirements to perform professional landscape architectural services; and

WHEREAS, the services to be provided by MIG are of an expert and technical nature; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the terms and conditions of this AGREEMENT, it is understood and agreed by and between the parties hereto as follows:

ARTICLE 1 – CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this CONTRACT have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this CONTRACT. The language of this CONTRACT shall be construed according to its fair meaning and not strictly for or against the CITY or CONTRACTOR. The word "CONTRACTOR" includes the party or parties identified in this CONTRACT. The singular shall include the plural and if there is more than one CONTRACTOR, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

ARTICLE 2 – DEFINITIONS

It is understood that the following words and phrases are used herein; each shall have the meaning set forth opposite the same:

AGREEMENT/CONTRACT	This contractual agreement between the CITY and MIG for landscape architectural design services.
BOARD	The Board of Public Works of the City of Los Angeles.
CALENDAR DAYS	Each day beginning at 12:01 a.m. and ending twenty-four (24) hours thereafter at 12:00 midnight.
CITY	The City of Los Angeles, Board of Public Works or its subordinate Bureaus. Depending on the context in which it is used, the term CITY may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles who is authorized to represent the City of Los Angeles in manners concerning this document.
CITY PROJECT MANAGER	The CITY'S designated representative for all issues related to this AGREEMENT
CONTRACTOR / CONSULTANT	MIG
CONTRACTOR SERVICES	All services to be provided by the CONTRACTOR specified in this AGREEMENT

DIRECTOR	Director of LASAN or his/her designated representative
LARGE WORK PACKAGE	Project valued at greater than \$50,000
LASAN	Bureau of Sanitation, Department of Public Works, City of Los Angeles
MBE/WBE/SBE/EBE/DVBE/OBE	Minority/Women/Small/Emerging/Disabled Veteran/Other Business Enterprises
NOTICE TO PROCEED	Notice from the CITY to the CONTRACTOR to begin the project
SAFETY DATA SHEET (SDS)	Lists hazardous properties, protective measures, and the safe handling of individual chemicals
SMALL WORK PACKAGE	Project valued at \$50,000 and less
SUBCONTRACTOR	An individual or company having an agreement with the CONTRACTOR to provide services, equipment, or materials to the CONTRACTOR
TASK ORDER SOLICITATION (TOS)	Describes project scope with a request for CONTRACTOR(S) to submit a proposal
WORK PACKAGE	A Work Package is a defined Task Order Solicitation (TOS) to perform services with a specified duration

ARTICLE 3 – PROJECT DESCRIPTION

LASAN owns and operates four (4) Water Reclamation Plants, more than 40 Clean Water Conveyance facilities, and various other facilities under the Watershed Program. These facilities require landscaping and site services such as tree trimming, maintenance of water features and irrigation systems, renovation projects utilizing native and drought tolerant plants, site hardscape, landscape repair, landscape architecture, and other types of landscape and site services. Such services are vital to continually upkeep and modernize City facilities.

ARTICLE 4 – RESPONSIBILITIES OF AND SERVICES/TASKS TO BE PERFORMED BY THE CONTRACTOR

- 4.1 The CONTRACTOR shall perform the services described in Article 4.4 [SCOPE OF SERVICES]. The CONTRACTOR shall perform such work with a degree of skill and diligence normally employed by professional landscape architects performing the same or similar services.
- 4.2 The CONTRACTOR warrants that the services will be performed consistent with generally accepted industry standards and that all services shall be performed in accordance with the specific WORK PACKAGE, plans, technical specifications, and other related documents.
- 4.3 Maintenance of Records

The CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this CONTRACT, in their original form or as otherwise approved by the CITY. These records shall be retained for a period of no less than four (4) years from the later of the following: (1) the final payment made by the CITY, (2) the expiration of this CONTRACT, or (3) termination of this CONTRACT. The records will be subject to examination and audit by authorized CITY personnel or the CITY'S representatives at any time. The CONTRACTOR shall provide any reports requested by the CITY regarding the performance of this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, the CONTRACTOR may, upon the CITY'S written approval, submit the required information to the CITY in an electronic format, e.g. USB flash drive, at the expiration or termination of this CONTRACT.

4.4 Scope of Services

Services shall include, but not limited to, the following:

A. Professional Landscape Architectural Services:

- As-needed professional landscape architectural services
- Design landscaping, water features, lakes, ponds, dry wells, bioswales, rain gardens, permeable surfaces
- Design water gardens utilizing reclaimed water and/or potable water, drought tolerant and water-wise landscapes
- Design stormwater capture landscapes integral features and storage

- Designs to be in adherence to City of Los Angeles Landscape Standards and Specifications.

Work in all service categories shall be performed in accordance with the specific WORK PACKAGES, plans, technical specifications, and other related documents.

Services shall be performed under one of the following WORK PACKAGE categories:

- SMALL WORK PACKAGE: Services less than or equal to \$50,000 for the duration of the work or CONTRACT
- LARGE WORK PACKAGE: Services greater than \$50,000 for the duration of the work or CONTRACT

CONTRACTORS were required to select a WORK PACKAGE category when completing their Statement of Qualification (SOQ). MIG selected the LARGE WORK PACKAGE.

A WORK PACKAGE is awarded pursuant to a defined Task Order Solicitation (TOS) to perform services for a specified duration. WORK PACKAGES can either be a project requiring routine work to last for the duration of the CONTRACT or an "As-Needed" type WORK PACKAGE that can be completed in days, weeks, months, or years. Contractors cannot perform services outside of their selected category, unless specifically requested by the CITY in writing, based on the City's particular needs.

It is the intention of CITY to establish an on-call rotating list under each WORK PACKAGE category with a maximum of ten (10) CONTRACTORS each. CONTRACTORS will be placed in random order to initially establish an on-call list under each WORK PACKAGE category.

Assignment of Work

For LARGE WORK PACKAGES with an estimated cost greater than \$50,000, the CITY will issue a TASK ORDER SOLICITATION (TOS) describing the project scope and will request the top three (3) CONTRACTORS on the list to submit proposals in response to the TOS. For each desired project scope, the project will be awarded to the on-call CONTRACTOR whose proposal represents the best overall value to the CITY for the requested work. The selected CONTRACTOR will be moved to the bottom of the list for the purpose of subsequent work assignments. Once an agreement is reached on the terms of the project, the CITY will issue a NOTICE TO PROCEED. If an agreement cannot be reached with the first CONTRACTOR that submits a proposal, the CITY reserves the right to negotiate with the next CONTRACTOR that submitted a proposal and so on until an agreement is reached. Under special circumstances, including where no CONTRACTOR responds to a TOS, the CITY reserves the right to require one or more CONTRACTORS to submit a proposal in response to a TOS, and/or to award the project to any CONTRACTOR of its choosing, regardless of the size, that the CITY deems appropriate.

The CITY reserves the right to advertise any project regardless of size to all

CONTRACTORS on the appropriate list. Additionally, and under urgent and special conditions, the CITY may choose to award the project to any CONTRACTOR of its choosing, regardless of the size, that the City deems appropriate.

4.5 CONTRACTOR Schedule of Services and Costs:

POSITION	RATE (\$/HR.)
Principal	\$220-\$240
Senior Landscape Architect	\$140-\$180
Senior Landscape Designer	\$120

ARTICLE 5 – KEY CONTRACTOR PERSONNEL

- 5.1 The CONTRACTOR designates the following person to represent the CONTRACTOR in all matters pertaining to this AGREEMENT:

Name, Title: Evan Mather, Principal/Director of Landscape and Architecture
Address: 617 West Seventh Street, Suite 304, Los Angeles, CA.
90017 Telephone: (213) 694-3800 x2525
E-mail: emather@migcom.com

Additional technical specialists shall be assigned subject to the CITY PROJECT MANAGER'S approval.

- 5.2 The CONTRACTOR agrees that personnel assigned to these positions at the commencement of services under this AGREEMENT shall serve in these positions as long as required by the CONTRACT, and the CONTRACTOR shall not change personnel assigned to these positions without the prior written consent and approval of the CITY'S PROJECT MANAGER, whose consent shall not be withheld unreasonably.
- 5.3 Unless otherwise approved by the CITY, the CONTRACTOR shall use its own employees to perform the services described in this CONTRACT. The CITY has the right to review and approve any personnel who are assigned to work under

this CONTRACT. The CONTRACTOR shall remove personnel from performing work under this CONTRACT if requested to do so by the CITY.

- 5.4 The CONTRACTOR shall not use SUBCONTRACTORS to assist in the performance of this CONTRACT without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, the CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT and paying all SUBCONTRACTORS. The CITY has the right to approve the CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of any SUBCONTRACTOR. The CITY does not have any obligation to pay the CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and any SUBCONTRACTOR.

ARTICLE 6 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

The CITY designates Todd Cromwell as its CITY PROJECT MANAGER to represent the CITY in all matters within the scope of this AGREEMENT relating to the conduct and approval of the work to be performed. Whenever the term "approval of CITY," "consult with CITY," "confer with CITY," or similar terms are used, they shall refer to the CITY PROJECT MANAGER. The CITY PROJECT MANAGER may designate an assistant to act in his/her stead. The CITY may designate another CITY employee to succeed Todd Cromwell as the CITY PROJECT MANAGER. The CONTRACTOR will be notified in writing in such event.

The CITY shall furnish, without charge, facilities and resources available to the CONTRACTOR as deemed reasonably necessary and appropriate by the CITY.

ARTICLE 7 – TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

The term of this AGREEMENT shall be for five (5) years with two (2) two-year renewal options, to be exercised at the CITY's sole discretion, from the date of full execution unless terminated as provided under Article 9 [TERMINATION ARTICLE] or extended by a duly approved amendment to this AGREEMENT and signed by the parties.

Unless otherwise provided, this CONTRACT shall take effect when all of the following events have occurred:

- A. This CONTRACT has been signed on behalf of the CONTRACTOR by the person or persons authorized to bind the CONTRACTOR;
- B. This CONTRACT has been approved by the City Council or by the BOARD, officer, or employee authorized to give such approval;

- C. The Office of the City Attorney has indicated in writing its approval of this CONTRACT as to form; and
- D. This CONTRACT has been signed on behalf of the CITY by the person designated by the City Council, or by the BOARD, officer, or employee authorized to enter into this CONTRACT.

ARTICLE 8 – SUSPENSION

At the CITY'S sole discretion, the CITY may suspend any or all services provided under this CONTRACT by providing the CONTRACTOR with a written notice of suspension. Upon receipt of the notice of suspension, the CONTRACTOR shall immediately cease the services suspended and shall not incur any additional obligations, costs, or expenses to the CITY until the CITY gives written notice to recommence the services.

ARTICLE 9 – TERMINATION

9.1 Termination for Convenience

The CITY may terminate this CONTRACT, in whole or in part, for the CITY'S convenience at any time by providing the CONTRACTOR thirty days (30) written notice. Upon receipt of the notice of termination, the CONTRACTOR shall immediately take action not to incur any additional obligations, costs, or expenses, except as may be necessary to terminate its activities. The CITY shall pay the CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by the CONTRACTOR to effect the termination. Thereafter, the CONTRACTOR shall have no further claims against the CITY under this CONTRACT. All finished and unfinished documents and materials procured for or produced under this CONTRACT, including all intellectual property rights the CITY is entitled to, shall become CITY property upon the date of the termination. The CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

9.2 Termination for Breach of Contract

9.2.1 Except as provided in Article 21 [FORCE MAJEURE/EXCUSABLE DELAYS ARTICLE], if the CONTRACTOR fails to perform any of the provisions of this CONTRACT or so fails to make progress as to endanger timely performance of this CONTRACT, the CITY may give the CONTRACTOR written notice of the default. The CITY'S default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of the CITY. Additionally, the CITY'S default notice may offer the CONTRACTOR an opportunity to provide the CITY with a plan to cure the default, which shall be submitted to the CITY within the

time period allowed by the CITY. At the CITY'S sole discretion, the CITY may accept or reject the CONTRACTOR'S plan. If the default cannot be cured or if the CONTRACTOR fails to cure within the period allowed by the CITY, then the CITY may terminate this CONTRACT due to the CONTRACTOR'S breach of this CONTRACT.

9.2.2 If the default under this CONTRACT is due to the CONTRACTOR'S failure to maintain the insurance required under this CONTRACT, the CONTRACTOR shall immediately: (1) suspend performance of any services under this CONTRACT for which insurance was required; and (2) notify its employees and SUBCONTRACTORS of the loss of insurance coverage and the CONTRACTOR'S obligation to suspend performance of services. The CONTRACTOR shall not recommence performance until the CONTRACTOR is fully insured and in compliance with the CITY'S requirements.

9.2.3 If a federal or state proceeding for relief of debtors is undertaken by or against the CONTRACTOR, or if the CONTRACTOR makes an assignment for the benefit of creditors, then the CITY may immediately terminate this CONTRACT.

9.2.4 If the CONTRACTOR engages in any dishonest conduct related to the performance or administration of this CONTRACT or violates the CITY'S laws, regulations, or policies relating to lobbying, then the CITY may immediately terminate this CONTRACT.

9.2.5 Acts of Moral Turpitude

a) The CONTRACTOR shall immediately notify the CITY if the CONTRACTOR or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").

b) If the CONTRACTOR or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to an Act of Moral Turpitude, the CITY may immediately terminate this CONTRACT.

c) If the CONTRACTOR or a Key Person is charged with or indicted for an Act of Moral Turpitude, the CITY may terminate this CONTRACT after providing the CONTRACTOR an opportunity to present evidence of the CONTRACTOR'S ability to perform under the terms of this CONTRACT.

- d) Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in the California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elder abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.
- e) For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this CONTRACT, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of the CONTRACTOR.

9.2.6 In the event the CITY terminates this CONTRACT as provided in this section, the CITY may procure, upon such terms and in the manner as the CITY may deem appropriate, services similar in scope and level of effort to those so terminated and the CONTRACTOR shall be liable to the CITY for all of its costs and damages, including, but not limited to, any excess costs for such services.

9.2.7 If, after notice of termination of this CONTRACT under the provisions of this section, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this section or that the default was excusable under the terms of this CONTRACT, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.

9.2.8 The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT.

9.2.9 In the event that this CONTRACT is terminated, the CONTRACTOR shall immediately notify all employees and SUBCONTRACTORS and shall notify in writing all other parties contracted with under the terms of this CONTRACT within five (5) working days of the termination.

ARTICLE 10 – SUBCONTRACT APPROVAL

All subcontracts that are one half of one percent (0.5%) of the total CONTRACT amount or \$10,000, whichever is greater, shall require the prior approval of the CITY. A copy of

all subcontracts shall be submitted to the CITY PROJECT MANAGER showing the SUBCONTRACTOR'S name and dollar amount of each subcontract. Wholly-owned subsidiaries of the CONTRACTOR shall not be considered SUBCONTRACTORS/SUBCONSULTANTS. The CONTRACTOR shall not substitute SUBCONTRACTORS listed in this AGREEMENT (Exhibit 01, Schedule A) without the prior written approval of the CITY. The CONTRACTOR shall not add SUBCONTRACTORS to assist in the performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, the CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT. The CITY has the right to approve the CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of SUBCONTRACTORS. The CITY does not have any obligation to pay the CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS.

ARTICLE 11 - COMPENSATION, INVOICING, AND PAYMENT

Definitions:

- 11.1 "Cost" as used in this Article is defined as the sum of: (1) Hourly Billing Rates; (2) Overhead (3) Profit; (4) Markup (Other Direct Costs and/or Subcontractor Expenses); as defined below. "Hourly Billing Rates" shall be at the rates approved by the CITY PROJECT MANAGER, to be charged by the CONTRACTOR for employees' time directly chargeable to their performance of the project work. Any adjustments to the CONTRACTOR'S Hourly Billing Rate shall be in accordance with established LASAN policies existing at the time the adjustment is approved. Hourly Billing Rate increases are limited to once per year, per employee, on the anniversary date of the CONTRACTOR'S AGREEMENT execution and are subject to the approval of the CITY. In no case shall the "Hourly Billing Rate" exceed the actual Hourly Rate paid to the employee.

Any adjustment to the SUBCONTRACTORS' salaries and Hourly Billing Rates shall be reviewed and approved by the CITY PROJECT MANAGER prior to invoicing. Adjustments to the SUBCONTRACTORS' salaries and Hourly Billing Rates may be increased one time per year, per employee, on the anniversary date of the CONTRACTOR'S AGREEMENT execution. Any such increases shall be in accordance with established LASAN policy at the time the adjustment is approved.

- 11.2 "Other Direct Cost" includes those costs of the CONTRACTOR directly identifiable to or incurred in the performance of services hereunder, including but not limited to reproduction, freight, messenger service, travel (in accordance with established CITY policies), equipment owned or rented by the CONTRACTOR (any equipment purchased and paid for under this project shall

become the property of the CITY), auto mileage charges (based on IRS allowable amounts), materials, permits, third party inspection or evaluation fees, sales tax, and supplies used in the work. Communication expenses, cost of office space, equipment, and supplies furnished to CITY personnel at the CONTRACTOR'S location shall be paid by the CITY. The CITY shall receive the full benefit of any free travel, frequent flyer mileage, discounts and/or any other advantages which are acquired by the CONTRACTOR as a result of CITY-sponsored travel.

- 11.3 "Subcontractor Expenses" shall be the actual amount paid by the CONTRACTOR to the SUBCONTRACTOR for their services to the CITY plus an administrative fee of five percent (5%),
- 11.4 "Profit" shall be limited to five percent (5%) and shall be applied to the "Hourly Billing Rates" and "Materials and Supplies".
- 11.5 "Overhead" shall be five percent (5%).
- 11.6 "Markup" shall be five percent (5%) applied to "Subcontractor Expenses" and "Other Direct Costs".

Table 1.

LASAN	Overhead Rate	Profit (%)	Mark-up	
			Subcontractor	Direct Costs
LASAN (Original)	10%	5%	10%	Cost + 10%
LASAN (Negotiated)	5%	5%	5%	Cost + 5%

- 11.7 Costs incurred by the CONTRACTOR prior to the actual date of full execution of this AGREEMENT shall only be payable to the CONTRACTOR if said costs were incurred in completing any task specifically authorized by this AGREEMENT and said costs are reviewed and approved by the CITY in writing and said approval for payment occurs after this AGREEMENT is fully executed. In no event shall interest be owed on any costs incurred prior to the actual date of full execution of this AGREEMENT.
- 11.8 Exhibit 16 [PROJECT SERVICES COST PROPOSAL], attached hereto and incorporated herein by this reference, shall be the format used for the estimated total cost by task for each Task Order. For Task Orders specifying a Cost Reimbursement Plus Profit compensation method, the Project Services Cost

Proposal shall be based upon the estimated hours of labor at estimated direct labor rates, the allocated indirect expenses, other direct costs, and profit. For Task Orders specifying a Lump Sum compensation method, the Project Services Cost Proposal shall set forth the total project cost and the appropriate payment milestones.

- 11.9 Hourly Billing Rate is a method of compensation whereby the CONTRACTOR is compensated on an hourly basis pursuant to established Hourly Billing Rates set forth in Exhibit 15 [fee schedule]. The hourly billing rates shall be approved by the CITY PROJECT MANAGER for the CONTRACTOR employees' time directly chargeable to their performance of the project work and includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the CONTRACTOR. Payments shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Project Task Order.
- 11.10 The CITY will not pay for the CONTRACTOR'S nor SUBCONTRACTOR'S personnel for invoice preparation. The CITY will not pay for the CONTRACTOR'S nor SUBCONTRACTOR'S communication expenses and computer time charges.

Compensation

- 11.11 The CONTRACTOR agrees to perform the work specified in Article 4 [RESPONSIBILITIES AND SERVICES/TASKS TO BE PERFORMED BY THE CONTRACTOR], and the CITY shall compensate the CONTRACTOR either on a Lump Sum basis, a Cost Reimbursement Plus Profit basis, or an Hourly Billing Rate basis upon mutual written agreement. The CITY shall designate the compensation method in the Task Orders to be issued under this AGREEMENT. If the Task Order specifies the compensation as being on a Cost Reimbursement Plus Profit or Hourly Billing Rate basis, payment shall be made in accordance with the Task Cost Estimates to be provided for CITY approval prior to issuance of Notice to Proceed for any task under this AGREEMENT. Hourly rates, SUBCONTRACTOR fees, and other direct/indirect charges shall be in accordance with rates set herein. Individuals who the CONTRACTOR wishes to add to the project must have their compensation rate approved by the CITY'S PROJECT MANAGER, and a

revised Scope of Services must be prepared as evidence of this addition. The total cost ceiling shall be stated in the Task Order.

If the Task Order specifies the compensation as being on a Lump Sum basis, payment shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Task Order. The total cost ceiling shall be stated in the Task Order.

The total cost ceiling for this AGREEMENT is \$14,400,000.

11.3.1 Invoicing and Payment

11.3.2 For Task Orders specifying a Cost Reimbursement Plus Profit method of payment, the CONTRACTOR shall, once each month, submit to the CITY an original and three (3) copies of an invoice in a format acceptable to the CITY which will include all costs and a proportionate amount of profit due the CONTRACTOR for services provided during the preceding month. Payments shall be made upon the submission of a complete and accurate invoice and supporting documentation. The CITY shall review the CONTRACTOR'S invoice in accordance with the CITY's review procedures. The CITY shall make a good faith effort to process payments in a timely manner.

11.3.3 Invoices shall be prepared in such form and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be reasonably required by the CITY to establish the amount of such invoices as allowable expenses. The CONTRACTOR shall submit a Subcontractor Utilization Form, Exhibit 2 [Schedule B, MBE/WBE/SBE/EBE/DVBE/OBE UTILIZATION PROFILE], as part of the monthly invoice, listing current MBE/WBE/SBE/EBE/ DVBE/OBE amounts invoiced as part of the invoicing procedures. The CONTRACTOR must provide an explanation for any item that falls short of the planned utilization with specific plans and recommendations for recovering any shortfalls in utilization. No such invoices shall be paid without the Subcontractor Utilization Form attachment. All invoices shall be subject to audit for a period of four (4) years from the termination of this AGREEMENT.

11.3.4 The CITY shall not be obligated to reimburse the CONTRACTOR for costs incurred in excess of the [Project Services Cost Proposal] set forth. The CONTRACTOR shall not be obligated to continue performance (including actions under the temporary stop work or termination clauses) or

otherwise incur costs in excess of the Project Services Cost Proposal unless and until the CITY shall have notified the CONTRACTOR in writing that such Project Services Cost Proposal has been increased and shall have specified in such notice an estimated Project Services Cost Proposal, which shall thereupon constitute the cost performance of this AGREEMENT. In the absence of the specified notice, the CITY shall not be obligated to reimburse the CONTRACTOR for any costs in excess of the Project Services Cost Proposal set forth, whether those costs were incurred during the course of the AGREEMENT or as a result of termination.

- 11.3.5 When and to the extent that the Project Services Cost Proposal has been increased, any costs incurred by the CONTRACTOR in excess of the Project Services Cost Proposal for any Task Order, prior to such increase, shall be allowable to the same extent as if such costs had been incurred after the increase.
- 11.3.6 Notwithstanding any other provision of this CONTRACT, including any exhibits or attachments incorporated therein, and in order for the CITY to comply with its governing legal requirements, the CITY shall have no obligation to make any payments to the CONTRACTOR unless the CITY shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this CONTRACT. The CONTRACTOR agrees that any services provided by the CONTRACTOR, purchases made by the CONTRACTOR, or expenses incurred by the CONTRACTOR in excess of the appropriation(s) shall be free and without charge to the CITY and the CITY shall have no obligation to pay for the services, purchases, or expenses. The CONTRACTOR shall have no obligation to provide any services, provide any equipment, or incur any expenses in excess of the appropriated amount(s) until the CITY appropriates additional funds for this CONTRACT.
- 11.3.7 For Task Orders specifying a Lump Sum method of payment or the Hourly Billing Rate method, the CONTRACTOR shall submit to the CITY, upon the satisfactory completion of each task/milestone, an original and three (3) copies of an invoice in a format acceptable to the CITY. The CITY shall review the CONTRACTOR'S invoice and notify the CONTRACTOR of exceptions or disputed items and their dollar amount. The total invoice amount, less any exceptions or disputed items shall be considered approved by the CITY. The CITY shall pay the CONTRACTOR all amounts approved for payment after the CITY'S PROJECT MANAGER receives the CONTRACTOR'S invoice.
- 11.3.8 False Claims Act
The CONTRACTOR acknowledges that it is aware of liabilities resulting

from submitting a false claim for payment by the CITY under the California False Claims Act (Cal. Gov. Code 12650 et seq.), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

ARTICLE 12 – AMENDMENTS, CHANGES, OR MODIFICATIONS

All amendments, changes, or modifications to this CONTRACT shall be in writing and signed and approved pursuant to the provisions of Article 7 [TERM OF AGREEMENT AND TIME OF EFFECTIVENESS].

ARTICLE 13 – INDEMNIFICATION AND INSURANCE

13.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of the CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, the CONTRACTOR shall defend, indemnify, and hold harmless the CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including the CONTRACTOR'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by the CONTRACTOR, SUBCONTRACTORS, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. This provision will survive expiration or termination of this CONTRACT.

13.2 INSURANCE

During the term of this CONTRACT and without limiting the CONTRACTOR'S obligation to indemnify, hold harmless, and defend the CITY, the CONTRACTOR shall provide and maintain at its own expense a program of insurance having the coverage and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 3 [INSURANCE CONTRACTUAL REQUIREMENTS] hereto). The insurance must: (1) conform to the CITY'S requirements; (2) comply with the Insurance Contractual Requirements (Form General 146 in Exhibit 3 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. The CONTRACTOR shall comply with all Insurance Contractual Requirements shown

on Exhibit 3 hereto. Exhibit 3 is hereby incorporated by reference and made a part of this CONTRACT.

13.3 BONDS Risk Manager Insurance Requirements (2023)

All bonds required by the CITY shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 et seq., as amended from time to time. CONTRACTOR will be required to submit proof of insurance and payment and performance bonds for 100% of the cost of the Work Package to the Board of Public Works. CONTRACTORS are required to submit these to the Board within 5 days of the issuance of the Work Package for approval by the City Administrative Officer's Risk Manager.

ARTICLE 14 – INDEPENDENT CONTRACTORS

The CONTRACTOR is an independent contractor and not as an agent or employee of the CITY. The CONTRACTOR shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY.

ARTICLE 15 – WARRANTIES AND RESPONSIBILITY OF CONTRACTOR

- 15.1 The CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within the CONTRACTOR'S profession, doing the same or similar work under the same or similar circumstances.
- 15.2 The CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the CONTRACTOR under this AGREEMENT. The CONTRACTOR shall, at no additional cost to the CITY, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, calculations, and other services.
- 15.3 The CONTRACTOR shall exhibit proper professional judgment in the use of information furnished by the CITY in Article 6 [RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY]. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, the CONTRACTOR will notify the CITY in a reasonable manner within three (3) business days after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact

on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.

- 15.4 The CONTRACTOR shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.
- 15.5 Except as specified in Article 13 [INDEMNIFICATION ARTICLE] and as otherwise provided in this AGREEMENT, the CONTRACTOR shall be and shall remain liable, in accordance with applicable law, for all damages to the CITY caused by the CONTRACTOR'S negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to the CITY, CITY-furnished data, or any third party (excepting any CONTRACTOR or SUBCONTRACTOR of any tier).

ARTICLE 16 - INTELLECTUAL PROPERTY INDEMNIFICATION

The CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the CITY, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by the CONTRACTOR, or its SUBCONTRACTORS, in performing the work under this CONTRACT; or (2) as a result of the CITY'S actual or intended use of any Work Product (as defined in Article 18 [OWNERSHIP AND LICENSE]) furnished by the CONTRACTOR, or its SUBCONTRACTORS, under this CONTRACT. The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. This provision will survive expiration or termination of this CONTRACT.

ARTICLE 17 – INTELLECTUAL PROPERTY WARRANTY

The CONTRACTOR represents and warrants that its performance of all obligations under this CONTRACT does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity, and/or proprietary information.

ARTICLE 18 – OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this CONTRACT including, without limitation, documents, materials, data, reports, manuals, specifications, artworks, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by the CONTRACTOR or its SUBCONTRACTORS under this CONTRACT (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of the CITY for its use in any manner the CITY deems appropriate. The CONTRACTOR hereby assigns to the CITY all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this CONTRACT. The CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

The CONTRACTOR agrees that a monetary remedy for breach of this CONTRACT may be inadequate, impracticable, or difficult to prove and that a breach may cause the CITY irreparable harm. The CITY may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude the CITY from seeking or obtaining any other relief to which the CITY may be entitled.

For all Work Products delivered to the CITY that are not originated or prepared by the CONTRACTOR or its SUBCONTRACTORS under this CONTRACT, the CONTRACTOR shall secure a grant, at no cost to the CITY, for a non-exclusive perpetual license to use such Work Products for any CITY purpose(s).

The CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the CITY.

Any subcontract entered into by the CONTRACTOR relating to this CONTRACT shall include this provision to contractually bind its SUBCONTRACTORS performing work under this CONTRACT such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein.

ARTICLE 19 – SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided,

however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 28 [PROHIBITION AGAINST ASSIGNMENT OR DELEGATION].

ARTICLE 20 – CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION

All notices shall be made in writing and may be given by personal delivery, regular mail, or electronic mail. Notices sent by regular mail should be registered or certified and sent to the designated contact person for each party and addressed as follows:

To the CITY:

Contact Person: Todd Cromwell
Address: Hyperion Water Reclamation Plant
12000 Vista Del Mar
Playa Del Rey, CA 90293
Telephone: (310) 648-5912
E-mail: todd.cromwell@lacity.org

To the CONTRACTOR:

Contact Person: Evan Mather, Principal/Director of Landscape and
Architecture Address: 617 West Seventh Street, Suite 304, Los Angeles, CA.
90017 Telephone: (213) 694-3800 x2525
E-mail: emather@migcom.com

ARTICLE 21 – FORCE MAJEURE (EXCUSABLE DELAYS)

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this CONTRACT, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a SUBCONTRACTOR of the CONTRACTOR shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both the CONTRACTOR and SUBCONTRACTOR, and without any fault or negligence of either of them. In such case, the CONTRACTOR shall not be liable for the delay or failure to perform, unless the

goods or services to be furnished by the SUBCONTRACTOR were obtainable from other sources in sufficient time to permit the CONTRACTOR to perform timely. As used in this CONTRACT, the term "SUBCONTRACTOR" means a subcontractor at any tier.

In the event the CONTRACTOR'S delay or failure to perform arises out of a Force Majeure Event, the CONTRACTOR agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

ARTICLE 22 – SEVERABILITY

Should any portion of this AGREEMENT be determined to be void or unenforceable, such shall be severed from the whole and the AGREEMENT will continue as modified.

ARTICLE 23 – DISPUTES

Should a dispute or controversy arise concerning provisions of this AGREEMENT or the performance of work hereunder, the parties may elect to submit such to a court of competent jurisdiction.

ARTICLE 24 – ENTIRE AGREEMENT

This AGREEMENT contains all of the agreements, representations, and understandings of the parties hereto and supersedes and/or incorporates any previous understandings, proposals, commitments, or agreements, whether oral or written, and may be modified or amended only as herein provided.

ARTICLE 25 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY, including but not limited to, laws regarding health and safety, labor and employment, wage and hours, and licensing. This CONTRACT and its performance shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. The CONTRACTOR shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this CONTRACT with no additional compensation paid to the CONTRACTOR.

In any action arising out of this CONTRACT, the CONTRACTOR consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term, or provision of this CONTRACT is held void, illegal, unenforceable, or in conflict with any federal, state, or local law or regulation having jurisdiction over this

AGREEMENT, the validity of the remaining parts, terms, or provisions of this CONTRACT shall not be affected thereby.

ARTICLE 26 – CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

For the duration of this CONTRACT, the CONTRACTOR shall maintain valid Business Tax Registration Certificate(s) as required by the CITY'S Business Tax Ordinance, Section 21.1 et seq. of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

Should any such certificate(s) become suspended or revoked, it is the CONTRACTOR'S responsibility to report the matter immediately to the CITY PROJECT MANAGER.

ARTICLE 27 – WAIVER

A waiver of a default of any part, term, or provision of this CONTRACT shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

ARTICLE 28 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

The CONTRACTOR may not, unless it has first obtained the written permission of the CITY:

- A. Assign or otherwise alienate any of its rights under this CONTRACT, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this CONTRACT.

ARTICLE 29 – PERMITS

The CONTRACTOR and its directors, officers, partners, agents, employees, and SUBCONTRACTORS, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications, and other documents necessary for the CONTRACTOR'S performance of this CONTRACT and shall pay any fees required therefore. The CONTRACTOR certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to the CONTRACTOR'S performance of this CONTRACT.

ARTICLE 30 – BEST TERMS

Throughout the term of this CONTRACT, the CONTRACTOR shall offer the CITY the best terms, prices, and discounts that are offered to any of the CONTRACTOR'S customers for similar goods and services provided under this CONTRACT.

ARTICLE 31 — CLAIMS FOR LABOR AND MATERIALS

The CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this CONTRACT so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produced by the CONTRACTOR hereunder) and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this CONTRACT.

ARTICLE 32 — BREACH

Except for Force Majeure, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

ARTICLE 33 — MANDATORY PROVISIONS PERTAINING TO NON-DISCRIMINATION IN EMPLOYMENT

Unless otherwise exempt, this CONTRACT is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. The CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this CONTRACT, the CONTRACTOR shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status, or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this CONTRACT by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of

this CONTRACT by reference and will be known as the "Equal Employment Practices" provisions of this CONTRACT.

- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this CONTRACT by reference and will be known as the "Affirmative Action Program" provisions of this CONTRACT.

Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 34 — CHILD SUPPORT OBLIGATIONS ASSIGNMENT ORDERS

The CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, the CONTRACTOR shall fully comply with all applicable State and Federal employment reporting requirements. Failure of the CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of the CONTRACTOR to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this CONTRACT. Failure of the CONTRACTOR or principal owner to cure the default within ninety (90) days of the notice of default will subject this CONTRACT to termination for breach. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 35 — LIVING WAGE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

35.1 LIVING WAGE ORDINANCE

The CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 et seq., as amended from time to time. The CONTRACTOR further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision. (Exhibit 5) [DECLARATION OF COMPLIANCE WITH LIVING WAGE ORDINANCE EXHIBIT]

35.2 SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

The CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 et seq., as amended from time to time. Any

subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 36 — ACCESS AND ACCOMMODATIONS

The CONTRACTOR represents and certifies that:

- A. The CONTRACTOR shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 et seq., the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 et seq., the Fair Housing Act, and its implementing regulations and any subsequent amendments, and the California Government Code Section 11135;
- B. The CONTRACTOR shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. The CONTRACTOR shall provide reasonable accommodation upon request to ensure equal access to CITY-funded programs, services, and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this CONTRACT are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

The CONTRACTOR understands that the CITY is relying upon these certifications and representations as a condition to funding this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 37 — CONTRACTOR RESPONSIBILITY ORDINANCE

The CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 et seq., as amended from time to time.

ARTICLE 38 — LOS ANGELES BUSINESS INCLUSION PROGRAM

Unless otherwise exempted prior to bid submission, the CONTRACTOR shall comply with all aspects of the Business Inclusion Program as described in the [Request for Qualifications (RFQ)], throughout the duration of this CONTRACT. The CONTRACTOR

shall utilize the Regional Alliance Marketplace for Procurement (RAMP) at <https://www.rampla.org/s/> to perform and document outreach to Minority, Women, and Other Business Enterprises. The CONTRACTOR shall perform subcontractor outreach activities through RAMP. The CONTRACTOR shall not change any of its designated SUBCONTRACTORS or pledged specific items of work to be performed by these SUBCONTRACTORS, nor shall the CONTRACTOR reduce their level of effort, without prior written approval of the CITY.

ARTICLE 39 — DISCLOSURE ORDINANCES

Unless otherwise exempt in accordance with the provisions of this Ordinance, this CONTRACT is subject to the Slavery Disclosure Ordinance, Section 10.41 et seq., of the Los Angeles Administrative Code, as may be amended from time to time. The CONTRACTOR certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision. Exhibit 4 [SLAVERY DISCLOSURE ORDINANCE] is attached hereto and incorporated herein by this reference.

The CONTRACTOR shall comply with Los Angeles Administrative Code Section 10.50 et seq., 'Disclosure of Border Wall Contracting.' The City or the Department of Public Works may terminate this CONTRACT at any time if the City or the Department of Public Works determines that the CONTRACTOR failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

ARTICLE 40 — CONTRACTOR PERFORMANCE EVALUATION ORDINANCE

At the end of this AGREEMENT, the CITY will conduct an evaluation of the CONTRACTOR'S performance. The CITY may also conduct evaluations of the CONTRACTOR'S performance during the term of the AGREEMENT. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the CONTRACTOR assigns to the AGREEMENT. A contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed fourteen (14) CALENDAR DAYS to respond. The CITY will use the final CITY evaluation, and any response from the CONTRACTOR, to evaluate proposals and to conduct reference checks when awarding other service contracts.

ARTICLE 41 – MUNICIPAL LOBBYING ORDINANCE

The CONTRACTOR for the CITY shall submit a certification, on a form prescribed by the City Ethics Commission, that the CONTRACTOR acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance, Exhibit 11 [MUNICIPAL LOBBYING ORDINANCE], if the CONTRACTOR qualifies as a lobbying entity under the Ordinance. The exemptions contained in Los Angeles Administrative Code Section 10.40.4 shall not apply to this subsection.

ARTICLE 42 – FIRST SOURCE HIRING ORDINANCE

The CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 43 – COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12) FOR MEASURE H/CONTRACTOR CONTRIBUTIONS/FUNDRAISING

Unless otherwise exempt, if this CONTRACT is valued at \$100,000 or more and requires approval by an elected CITY office, the CONTRACTOR, CONTRACTOR'S principals, and the CONTRACTOR'S SUBCONTRACTORS expected to receive at least \$100,000 for performance under this CONTRACT, and the principals of those SUBCONTRACTORS (the "Restricted Persons") shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles the CITY to terminate this CONTRACT and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected CITY officials or candidates for elected CITY office for twelve months after this CONTRACT is signed. Additionally, a CONTRACTOR subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any CONTRACTOR subject to Charter Section 470(c)(12) shall include the following notice in any contract with any SUBCONTRACTOR expected to receive at least \$100,000 for performance under this CONTRACT:

"Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #_____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles ("CITY") officials and candidates for elected CITY office for twelve months after the CITY

Contract is signed. You are required to provide the names and contact information of your principals to the CONTRACTOR and to amend that information within ten business days if it changes during the twelve-month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

ARTICLE 44 — COMPLIANCE WITH THE IRAN CONTRACTING ACT OF 2010

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with the CITY for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit." (Exhibit XX)

ARTICLE 45 — INTEGRATED CONTRACT

This CONTRACT sets forth all of the rights and duties of the parties with respect to the subject matter of this CONTRACT and replaces any and all previous contracts or understandings, whether written or oral, relating thereto. This CONTRACT may be amended only as provided for in the provisions of Article 12 [AMENDMENTS, CHANGES, OR MODIFICATIONS] hereof.

ARTICLE 46 — DATA PROTECTION

- A. The CONTRACTOR shall protect, using the most secure means and technology that is commercially available, CITY-provided data or consumer-provided data acquired in the course and scope of this CONTRACT, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). The CONTRACTOR shall notify the CITY in writing as soon as reasonably feasible, and in any event within twenty-four (24) hours, of the CONTRACTOR'S discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. The CONTRACTOR shall begin remediation immediately. The CONTRACTOR shall provide daily updates, or more frequently if required by the CITY, regarding findings and actions performed by the CONTRACTOR until the Data Breach or Security Incident has been effectively resolved to the CITY'S satisfaction. The CONTRACTOR shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with the CITY. At the CITY'S sole discretion, the CITY and its authorized agents shall have the right to lead or participate in the investigation. The CONTRACTOR shall cooperate fully with the CITY, its agents, and law

enforcement.

- B. If the CITY is subject to liability for any Data Breach or Security Incident, then the CONTRACTOR shall fully indemnify and hold harmless the CITY and defend against any resulting actions.

ARTICLE 47 – LOCAL BUSINESS PREFERENCE ORDINANCE

The CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 48 – CITY CONTRACTOR’S USE OF CRIMINAL HISTORY FOR CONSIDERATION OF EMPLOYMENT APPLICATIONS

The CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 49 – COMPLIANCE WITH IDENTITY THEFT LAWS AND PAYMENT CARD DATA SECURITY STANDARDS

The CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to customers. The CONTRACTOR also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program, or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, the CONTRACTOR shall verify proper truncation of receipts in compliance with FACTA.

ARTICLE 50 – COMPLIANCE WITH CALIFORNIA PUBLIC RESOURCES CODE SECTION 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor if the person has been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, the CONTRACTOR shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by the CITY. The CONTRACTOR is required to have all employees, volunteers, and SUBCONTRACTORS (including all employees and volunteers of any SUBCONTRACTOR) of the CONTRACTOR working on the premises to pass a fingerprint and background check through the California Department of Justice at the CONTRACTOR'S sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

ARTICLE 51 – POSSESSORY INTERESTS TAX

Rights granted to the CONTRACTOR by the CITY may create a possessory interest. The CONTRACTOR agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, the CONTRACTOR shall pay the property tax. The CONTRACTOR acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

ARTICLE 52 – CONFIDENTIALITY

All documents, information, City Data (as that term is defined in Article 46) and materials provided to the CONTRACTOR by the CITY or developed by the CONTRACTOR pursuant to this CONTRACT (collectively "Confidential Information") are confidential. The CONTRACTOR shall not provide, and shall prohibit its employees and subcontractors from providing or disclosing, or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by the CITY or as required by law. The CONTRACTOR shall immediately notify the CITY of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this CONTRACT.

ARTICLE 53 – COUNTERPARTS

This AGREEMENT may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by the CITY) and sent by e-mail shall be deemed original signatures.

ARTICLE 54 – CONTRACTOR DATA REPORTING

If CONTRACTOR is a for-profit, privately owned business, CONTRACTOR shall, within 30 days of the effective date of the CONTRACT and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the CONTRACT), report the following information to CITY via the Regional Alliance Marketplace for Procurement ("RAMP") or via another method specified by CITY: Contractor's and any Subcontractor's annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner ("Contractor/Subcontractor Information"). CONTRACTOR shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by CITY.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year written below.

CITY OF LOS ANGELES

By: _____

Title: Commissioner, Board of Public Works

Date: _____

By: _____

Title: Commissioner, Board of Public Works

Date: _____

APPROVED AS TO FORM:

HYDEE FELDSTEIN SOTO, City Attorney

MIG

By: Evan Mather_____

Title: Principal

Date: _____

By: _____
Virginia Choi

Title: Deputy City Attorney

Date: _____

ATTEST:

PETTY F. SANTOS, Interim City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

CONTRACT NO. C- _____

**SERVICE AGREEMENT BETWEEN
THE CITY OF LOS ANGELES
AND
THE POND COMPANY, INC.
FOR
LA SANITATION ENVIRONMENTAL LANDSCAPING AND
SITE SERVICES**



City of Los Angeles
Department of Public Works
Los Angeles Sanitation and Environment

Barbara Romero, Director and General Manager
Nicole Bernson, Assistant Director

Hyperion Water Reclamation Plant (HWRP)
Hi Sang Kim, Acting Plant Manager

LA SANITATION ENVIRONMENTAL LANDSCAPING AND SITE
SERVICES

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LA SANITATION ENVIRONMENTAL LANDSCAPING AND SITE SERVICES

This AGREEMENT, made and entered into by and between the City of Los Angeles, a municipal corporation acting by order of and through its Board of Public Works (hereinafter called the "CITY") and THE POND COMPANY (hereinafter also referred to as the "CONTRACTOR") is set forth as follows:

WITNESSETH

WHEREAS, the CITY has a need for landscaping and site services at Department of Public Works, Bureau of Sanitation (LASAN) facilities; and

WHEREAS, the CITY is committed to maintaining, preserving, and upgrading its landscapes and sites; and

WHEREAS, the CONTRACTOR'S services are deemed to be vital to meet the CITY's commitment to maintain, preserve, and upgrade its landscapes and sites; and

WHEREAS, the CITY plans to utilize THE POND COMPANY to provide landscaping and site services, during the course of a nine (9)-year period (five years and two 2-year renewal options); and

WHEREAS, on May 12, 2021, the Board of Public Works authorized the Bureau of Sanitation (LASAN) to distribute a Request for Qualifications (RFQ) for Landscaping and Site services and to negotiate a contract with a qualified proposer; and

WHEREAS, on August 4, 2021, LASAN received seven (7) proposals in response to the RFQ; and

WHEREAS, THE POND COMPANY was deemed a qualified proposer with the experience and expertise necessary to perform said services as determined by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, THE POND COMPANY meets the state licensing requirements to perform professional landscape services; and

WHEREAS, the services to be provided by THE POND COMPANY are of an expert and technical nature; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the terms and conditions of this AGREEMENT, it is understood and agreed by and between the parties hereto as follows:

ARTICLE 1 – CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this CONTRACT have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this CONTRACT. The language of this CONTRACT shall be construed according to its fair meaning and not strictly for or against the CITY or CONTRACTOR. The word "CONTRACTOR" includes the party or parties identified in this CONTRACT. The singular shall include the plural and if there is more than one CONTRACTOR, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

ARTICLE 2 – DEFINITIONS

It is understood that the following words and phrases are used herein; each shall have the meaning set forth opposite the same:

AGREEMENT/CONTRACT	This contractual agreement between the CITY and THE POND COMPANY for landscape services.
BOARD	The Board of Public Works of the City of Los Angeles.
CALENDAR DAYS	Each day beginning at 12:01 a.m. and ending twenty-four (24) hours thereafter at 12:00 midnight.
CITY	The City of Los Angeles, Board of Public Works or its subordinate Bureaus. Depending on the context in which it is used, the term CITY may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles who is authorized to represent the City of Los Angeles in manners concerning this document.
CITY PROJECT MANAGER	The CITY'S designated representative for all issues related to this AGREEMENT
CONTRACTOR / CONSULTANT	THE POND COMPANY
CONTRACTOR SERVICES	All services to be provided by the CONTRACTOR specified in this AGREEMENT

DIRECTOR	Director of LASAN or his/her designated representative
LARGE WORK PACKAGE	Project valued at greater than \$50,000
LASAN	Bureau of Sanitation, Department of Public Works, City of Los Angeles
MBE/WBE/SBE/EBE/DVBE/OBE	Minority/Women/Small/Emerging/Disabled Veteran/Other Business Enterprises
NOTICE TO PROCEED	Notice from the CITY to the CONTRACTOR to begin the project
SAFETY DATA SHEET (SDS)	Lists hazardous properties, protective measures, and the safe handling of individual chemicals
SMALL WORK PACKAGE	Project valued at \$50,000 and less
SUBCONTRACTOR	An individual or company having an agreement with the CONTRACTOR to provide services, equipment, or materials to the CONTRACTOR
TASK ORDER SOLICITATION (TOS)	Describes project scope with a request for CONTRACTOR(S) to submit a proposal
WORK PACKAGE	A Work Package is a defined Task Order Solicitation (TOS) to perform services with a specified duration

ARTICLE 3 – PROJECT DESCRIPTION

LASAN owns and operates four (4) Water Reclamation Plants, more than 40 Clean Water Conveyance facilities, and various other facilities under the Watershed Program. These facilities require landscaping and site services such as tree trimming, maintenance of water features and irrigation systems, renovation projects utilizing native and drought tolerant plants, site hardscape, landscape repair, landscape

architecture and other types of landscape and site services. Such services are vital to continually upkeep and modernize City facilities.

**ARTICLE 4 – RESPONSIBILITIES OF AND SERVICES/TASKS TO BE
PERFORMED BY THE CONTRACTOR**

- 4.1 The CONTRACTOR shall perform the services described in Article 4.4 [SCOPE OF SERVICES]. The CONTRACTOR shall perform such work with a degree of skill and diligence normally employed by professional landscaping contractors performing the same or similar services.
- 4.2 The CONTRACTOR warrants that the services will be performed consistent with generally accepted industry standards and that all services shall be performed in accordance with the specific WORK PACKAGE, plans, technical specifications, and other related documents.

4.3 Maintenance of Records

The CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this CONTRACT, in their original form or as otherwise approved by the CITY. These records shall be retained for a period of no less than four (4) years from the later of the following: (1) the final payment made by the CITY, (2) the expiration of this CONTRACT, or (3) termination of this CONTRACT. The records will be subject to examination and audit by authorized CITY personnel or the CITY'S representatives at any time. The CONTRACTOR shall provide any reports requested by the CITY regarding the performance of this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, the CONTRACTOR may, upon the CITY'S written approval, submit the required information to the CITY in an electronic format, e.g. USB flash drive, at the expiration or termination of this CONTRACT.

4.4 Scope of Services

Services shall include, but not limited to, the following:

A. Landscape Feature Maintenance, Construction and Repair:

- Renovation and maintenance of lakes, ponds, streams, display fountains, water features, dry wells, bioswales, rain and roof gardens, permeable walkways, etc
- Landscape features construction, renovation and repair Site hardscape/concrete repair and replacement
- Irrigation system (potable and reclaimed water) installation, renovation and repair
- Conversion of existing landscaped areas into water wise drought tolerant landscapes
- Construction site debris clean up, off site recycling and/or disposal of non-recyclable materials

B. Nursery Support:

- Plant material propagation, greenhouse management, nursery plant care and irrigation management.

Work in all service categories shall be performed in accordance with the specific WORK PACKAGES, plans, technical specifications, and other related documents.

Services shall be performed under one of the following WORK PACKAGE categories:

- SMALL WORK PACKAGE: Services less than or equal to \$50,000 for the duration of the work or CONTRACT
- LARGE WORK PACKAGE: Services greater than \$50,000 for the duration of the work or CONTRACT

CONTRACTORS were required to select a WORK PACKAGE category when completing their Statement of Qualification (SOQ). THE POND COMPANY, INC. selected the LARGE WORK PACKAGE.

A WORK PACKAGE is awarded pursuant to a defined Task Order Solicitation (TOS) to perform services for a specified duration. WORK PACKAGES can either be a project requiring routine work to last for the duration of the CONTRACT or an "As-Needed" type WORK PACKAGE that can be completed in days, weeks, months, or years. Contractors cannot perform services outside of their selected category, unless specifically requested by the CITY in writing, based on the City's particular needs.

It is the intention of CITY to establish an on-call rotating list under each WORK PACKAGE category with a maximum of ten (10) CONTRACTORS each. CONTRACTORS will be placed in random order to initially establish an on-call list under each WORK PACKAGE category.

Assignment of Work

For LARGE WORK PACKAGES with an estimated cost greater than \$50,000, the CITY will issue a TASK ORDER SOLICITATION (TOS) describing the project scope and will request the top three (3) CONTRACTORS on the list to submit proposals in response to the TOS. For each desired project scope, the project will be awarded to the on-call CONTRACTOR whose proposal represents the best overall value to the CITY for the requested work. The selected CONTRACTOR will be moved to the bottom of the list for the purpose of subsequent work assignments. Once an agreement is reached on the terms of the project, the CITY will issue a NOTICE TO PROCEED. If an agreement cannot be reached with the first CONTRACTOR that submits a proposal, the CITY reserves the right to negotiate with the next CONTRACTOR that submitted a proposal and so on until an agreement is reached. Under special circumstances, including where no CONTRACTOR responds to a TOS, the CITY reserves the right to require one or more CONTRACTORS to submit a proposal in response to a TOS, and/or to award the project to any CONTRACTOR of its choosing, regardless of the size, that the CITY deems appropriate.

The CITY reserves the right to advertise any project regardless of size to all CONTRACTORS on the appropriate list. Additionally, and under urgent and special conditions, the CITY may choose to award the project to any CONTRACTOR of its choosing, regardless of the size, that the City deems appropriate.

4.5 CONTRACTOR Schedule of Services and Costs:

POSITION	RATE (\$/HR.)
Landscape Supervisor	\$100/hr
Landscape Foreman	\$100/hr
Laborer	\$55.00/hr
Nursery Support	\$55.00/hr
Delivery/Travel	\$55.00/hr

ARTICLE 5 – KEY CONTRACTOR PERSONNEL

- 5.1 The CONTRACTOR designates the following person to represent the CONTRACTOR in all matters pertaining to this AGREEMENT:

Name, Title: Jon Rasmussen, Owner/President
Address: 390 Alhambra Road #E, San Gabriel, CA 91775
Telephone: (626) 284-5937
E-mail: jon@thepondcompany.com

Additional technical specialists shall be assigned subject to the CITY PROJECT MANAGER'S approval.

- 5.2 The CONTRACTOR agrees that personnel assigned to these positions at the commencement of services under this AGREEMENT shall serve in these positions as long as required by the CONTRACT, and the CONTRACTOR shall not change personnel assigned to these positions without the prior written consent and approval of the CITY'S PROJECT MANAGER, whose consent shall not be withheld unreasonably.
- 5.3 Unless otherwise approved by the CITY, the CONTRACTOR shall use its own employees to perform the services described in this CONTRACT. The CITY has the right to review and approve any personnel who are assigned to work under this CONTRACT. The CONTRACTOR shall remove personnel from performing work under this CONTRACT if requested to do so by the CITY.

- 5.4 The CONTRACTOR shall not use SUBCONTRACTORS to assist in the performance of this CONTRACT without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, the CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT and paying all SUBCONTRACTORS. The CITY has the right to approve the CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of any SUBCONTRACTOR. The CITY does not have any obligation to pay the CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and any SUBCONTRACTOR.

ARTICLE 6 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

The CITY designates Todd Cromwell as its CITY PROJECT MANAGER to represent the CITY in all matters within the scope of this AGREEMENT relating to the conduct and approval of the work to be performed. Whenever the term "approval of CITY," "consult with CITY," "confer with CITY," or similar terms are used, they shall refer to the CITY PROJECT MANAGER. The CITY PROJECT MANAGER may designate an assistant to act in his/her stead. The CITY may designate another CITY employee to succeed Todd Cromwell as the CITY PROJECT MANAGER. The CONTRACTOR will be notified in writing in such event.

The CITY shall furnish, without charge, facilities and resources available to the CONTRACTOR as deemed reasonably necessary and appropriate by the CITY.

ARTICLE 7 – TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

The term of this AGREEMENT shall be for five (5) years with two (2) two-year renewal options, to be exercised at the CITY's sole discretion, from the date of full execution unless terminated as provided under Article 9 [TERMINATION] or extended by a duly approved amendment to this AGREEMENT and signed by the parties.

Unless otherwise provided, this CONTRACT shall take effect when all of the following events have occurred:

- A. This CONTRACT has been signed on behalf of the CONTRACTOR by the person or persons authorized to bind the CONTRACTOR;
- B. This CONTRACT has been approved by the City Council or by the BOARD, officer, or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this CONTRACT as to form; and
- D. This CONTRACT has been signed on behalf of the CITY by the person designated by the City Council, or by the BOARD, officer, or employee authorized to enter into this CONTRACT.

ARTICLE 8 – SUSPENSION

At the CITY'S sole discretion, the CITY may suspend any or all services provided under this CONTRACT by providing the CONTRACTOR with a written notice of suspension. Upon receipt of the notice of suspension, the CONTRACTOR shall immediately cease the services suspended and shall not incur any additional obligations, costs, or expenses to the CITY until the CITY gives written notice to recommence the services.

ARTICLE 9 – TERMINATION

9.1 Termination for Convenience

The CITY may terminate this CONTRACT, in whole or in part, for the CITY'S convenience at any time by providing the CONTRACTOR thirty days (30) written notice. Upon receipt of the notice of termination, the CONTRACTOR shall immediately take action not to incur any additional obligations, costs, or expenses, except as may be necessary to terminate its activities. The CITY shall pay the CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by the CONTRACTOR to effect the termination. Thereafter, the CONTRACTOR shall have no further claims against the CITY under this CONTRACT. All finished and unfinished documents and materials procured for or produced under this CONTRACT, including all intellectual property rights the CITY is entitled to, shall become CITY property upon the date of the termination. The CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

9.2 Termination for Breach of Contract

9.2.1 Except as provided in Article 21 [FORCE MAJEURE/EXCUSABLE DELAYS], if the CONTRACTOR fails to perform any of the provisions of

this CONTRACT or so fails to make progress as to endanger timely performance of this CONTRACT, the CITY may give the CONTRACTOR written notice of the default. The CITY'S default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of the CITY. Additionally, the CITY'S default notice may offer the CONTRACTOR an opportunity to provide the CITY with a plan to cure the default, which shall be submitted to the CITY within the time period allowed by the CITY. At the CITY'S sole discretion, the CITY may accept or reject the CONTRACTOR'S plan. If the default cannot be cured or if the CONTRACTOR fails to cure within the period allowed by the CITY, then the CITY may terminate this CONTRACT due to the CONTRACTOR'S breach of this CONTRACT.

9.2.2 If the default under this CONTRACT is due to the CONTRACTOR'S failure to maintain the insurance required under this CONTRACT, the CONTRACTOR shall immediately: (1) suspend performance of any services under this CONTRACT for which insurance was required; and (2) notify its employees and SUBCONTRACTORS of the loss of insurance coverage and the CONTRACTOR'S obligation to suspend performance of services. The CONTRACTOR shall not recommence performance until the CONTRACTOR is fully insured and in compliance with the CITY'S requirements.

9.2.3 If a federal or state proceeding for relief of debtors is undertaken by or against the CONTRACTOR, or if the CONTRACTOR makes an assignment for the benefit of creditors, then the CITY may immediately terminate this CONTRACT.

9.2.4 If the CONTRACTOR engages in any dishonest conduct related to the performance or administration of this CONTRACT or violates the CITY'S laws, regulations, or policies relating to lobbying, then the CITY may immediately terminate this CONTRACT.

9.2.5 Acts of Moral Turpitude

a) The CONTRACTOR shall immediately notify the CITY if the CONTRACTOR or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").

b) If the CONTRACTOR or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing

related to an Act of Moral Turpitude, the CITY may immediately terminate this CONTRACT.

- c) If the CONTRACTOR or a Key Person is charged with or indicted for an Act of Moral Turpitude, the CITY may terminate this CONTRACT after providing the CONTRACTOR an opportunity to present evidence of the CONTRACTOR'S ability to perform under the terms of this CONTRACT.
- d) Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in the California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elder abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.
- e) For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this CONTRACT, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of the CONTRACTOR.

9.2.6 In the event the CITY terminates this CONTRACT as provided in this section, the CITY may procure, upon such terms and in the manner as the CITY may deem appropriate, services similar in scope and level of effort to those so terminated and the CONTRACTOR shall be liable to the CITY for all of its costs and damages, including, but not limited to, any excess costs for such services.

9.2.7 If, after notice of termination of this CONTRACT under the provisions of this section, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this section or that the default was excusable under the terms of this CONTRACT, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.

9.2.8 The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT.

9.2.9 In the event that this CONTRACT is terminated, the CONTRACTOR shall

immediately notify all employees and SUBCONTRACTORS and shall notify in writing all other parties contracted with under the terms of this CONTRACT within five (5) working days of the termination.

ARTICLE 10 – SUBCONTRACT APPROVAL

All subcontracts that are one half of one percent (0.5%) of the total CONTRACT amount or \$10,000, whichever is greater, shall require the prior approval of the CITY. A copy of all subcontracts shall be submitted to the CITY PROJECT MANAGER showing the SUBCONTRACTOR'S name and dollar amount of each subcontract. Wholly-owned subsidiaries of the CONTRACTOR shall not be considered SUBCONTRACTORS/ SUBCONSULTANTS. The CONTRACTOR shall not substitute SUBCONTRACTORS listed in this AGREEMENT (Exhibit 01, Schedule A) without the prior written approval of the CITY. The CONTRACTOR shall not add SUBCONTRACTORS to assist in the performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, the CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT. The CITY has the right to approve the CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of SUBCONTRACTORS. The CITY does not have any obligation to pay the CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS.

ARTICLE 11 - COMPENSATION, INVOICING, AND PAYMENT

Definitions:

- 11.1 "Cost" as used herein is defined as the sum of: (1) Hourly Billing Rates; (2) Overhead (3) Profit; (4) Markup (Other Direct Costs and/or Subcontractor Expenses); as defined below. "Hourly Billing Rates" shall be at the rates approved by the CITY PROJECT MANAGER, to be charged by the CONTRACTOR for employees' time directly chargeable to their performance of the project work. Any adjustments to the CONTRACTOR'S Hourly Billing Rate shall be in accordance with established LASAN policies existing at the time the adjustment is approved. Hourly Billing Rate increases are limited to once per year, per employee, on the anniversary date of the CONTRACTOR'S AGREEMENT execution and are subject to the approval of the CITY. In no case shall the "Hourly Billing Rate" exceed the actual Hourly Rate paid to the employee.

Any adjustment to the SUBCONTRACTORS' salaries and Hourly Billing Rates shall be reviewed and approved by the CITY PROJECT MANAGER prior to

invoicing. Adjustments to the SUBCONTRACTORS' salaries and Hourly Billing Rates may be increased one time per year, per employee, on the anniversary date of the CONTRACTOR'S AGREEMENT execution. Any such increases shall be in accordance with established LASAN policy at the time the adjustment is approved.

- 11.2 "Other Direct Cost" includes those costs of the CONTRACTOR directly identifiable to or incurred in the performance of services hereunder, including but not limited to reproduction, freight, messenger service, travel (in accordance with established CITY policies), equipment owned or rented by the CONTRACTOR (any equipment purchased and paid for under this project shall become the property of the CITY), auto mileage charges (based on IRS allowable amounts), materials, permits, third party inspection or evaluation fees, sales tax, and supplies used in the work. Communication expenses, cost of office space, equipment, and supplies furnished to CITY personnel at the CONTRACTOR'S location shall be paid by the CITY. The CITY shall receive the full benefit of any free travel, frequent flyer mileage, discounts and/or any other advantages which are acquired by the CONTRACTOR as a result of CITY-sponsored travel.
- 11.3 "Subcontractor Expenses" shall be the actual amount paid by the CONTRACTOR to the SUBCONTRACTOR for their services to the CITY plus an administrative fee of five percent (5%),
- 11.4 "Profit" shall be limited to five percent (5%) and shall be applied to the "Hourly Billing Rates" and "Materials and Supplies".
- 11.5 "Overhead" shall be five percent (5%).
- 11.6 "Markup" shall be five percent (5%) applied to "Subcontractor Expenses" and "Other Direct Costs".

Table 1.

LASAN	Overhead Rate	Profit (%)	Mark-up	
			Subcontractor	Direct Costs
LASAN (Original)	10%	5%	10%	Cost + 10%

LASAN (Negotiated)	5%	5%	5%	Cost + 5%
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- 11.7 Costs incurred by the CONTRACTOR prior to the actual date of full execution of this AGREEMENT shall only be payable to the CONTRACTOR if said costs were incurred in completing any task specifically authorized by this AGREEMENT and said costs are reviewed and approved by the CITY in writing and said approval for payment occurs after this AGREEMENT is fully executed. In no event shall interest be owed on any costs incurred prior to the actual date of full execution of this AGREEMENT.
- 11.8 Exhibit 16 [PROJECT SERVICES COST PROPOSAL], attached hereto and incorporated herein by this reference, shall be the format used for the estimated total cost by task for each Task Order. For Task Orders specifying a Cost Reimbursement Plus Profit compensation method, the Project Services Cost Proposal shall be based upon the estimated hours of labor at estimated direct labor rates, the allocated indirect expenses, other direct costs, and profit. For Task Orders specifying a Lump Sum compensation method, the Project Services Cost Proposal shall set forth the total project cost and the appropriate payment milestones.
- 11.9 Hourly Billing Rate is a method of compensation whereby the CONTRACTOR is compensated on an hourly basis pursuant to established Hourly Billing Rates set forth in Exhibit 15 [fee schedule]. The hourly billing rates shall be approved by the CITY PROJECT MANAGER for the CONTRACTOR employees' time directly chargeable to their performance of the project work and includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the CONTRACTOR. Payments shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Project Task Order.
- 11.10 The CITY will not pay for the CONTRACTOR'S nor SUBCONTRACTOR'S personnel for invoice preparation. The CITY will not pay for the CONTRACTOR'S nor SUBCONTRACTOR'S communication expenses and computer time charges.

11.2.0 Compensation

The CONTRACTOR agrees to perform the work specified in Article 4 [RESPONSIBILITIES AND SERVICES/TASKS TO BE PERFORMED BY THE CONTRACTOR], and the CITY shall compensate the CONTRACTOR either on a Lump Sum basis, a Cost Reimbursement Plus Profit basis, or an Hourly Billing Rate basis upon mutual written agreement. The CITY shall designate the compensation method in the Task Orders to be issued under this AGREEMENT. If the Task Order specifies the compensation as being on a Cost Reimbursement Plus Profit or Hourly Billing Rate basis, payment shall be made in accordance with the Task Cost Estimates to be provided for CITY approval prior to issuance of Notice to Proceed for any task under this AGREEMENT. Hourly rates, SUBCONTRACTOR fees, and other direct/indirect charges shall be in accordance with rates set herein. Individuals who the CONTRACTOR wishes to add to the project must have their compensation rate approved by the CITY'S PROJECT MANAGER, and a revised Scope of Services must be prepared as evidence of this addition. The total cost ceiling shall be stated in the Task Order.

If the Task Order specifies the compensation as being on a Lump Sum basis, payment shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Task Order. The total cost ceiling shall be stated in the Task Order.

The total cost ceiling for this AGREEMENT is \$14,400,000.

11.3.1 Invoicing and Payment

11.3.2 For Task Orders specifying a Cost Reimbursement Plus Profit method of payment, the CONTRACTOR shall, once each month, submit to the CITY an original and three (3) copies of an invoice in a format acceptable to the CITY which will include all costs and a proportionate amount of profit due the CONTRACTOR for services provided during the preceding month. Payments shall be made upon the submission of a complete and accurate invoice and supporting documentation. The CITY shall review the CONTRACTOR'S invoice in accordance with the CITY's review procedures. The CITY shall make a good faith effort to process payments in a timely manner.

11.3.3 Invoices shall be prepared in such form and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be reasonably required by the CITY to establish the amount of such invoices as allowable expenses. The CONTRACTOR shall submit a Subcontractor Utilization Form, Exhibit 2 [Schedule B,

MBE/WBE/SBE/EBE/DVBE/OBE UTILIZATION PROFILE], as part of the monthly invoice, listing current MBE/WBE/SBE/EBE/ DVBE/OBE amounts invoiced as part of the invoicing procedures. The CONTRACTOR must provide an explanation for any item that falls short of the planned utilization with specific plans and recommendations for recovering any shortfalls in utilization. No such invoices shall be paid without the Subcontractor Utilization Form attachment. All invoices shall be subject to audit for a period of four (4) years from the termination of this AGREEMENT.

- 11.3.4 The CITY shall not be obligated to reimburse the CONTRACTOR for costs incurred in excess of the [Project Services Cost Proposal] set forth. The CONTRACTOR shall not be obligated to continue performance (including actions under the temporary stop work or termination clauses) or otherwise incur costs in excess of the Project Services Cost Proposal unless and until the CITY shall have notified the CONTRACTOR in writing that such Project Services Cost Proposal has been increased and shall have specified in such notice an estimated Project Services Cost Proposal, which shall thereupon constitute the cost performance of this AGREEMENT. In the absence of the specified notice, the CITY shall not be obligated to reimburse the CONTRACTOR for any costs in excess of the Project Services Cost Proposal set forth, whether those costs were incurred during the course of the AGREEMENT or as a result of termination.
- 11.3.5 When and to the extent that the Project Services Cost Proposal has been increased, any costs incurred by the CONTRACTOR in excess of the Project Services Cost Proposal for any Task Order, prior to such increase, shall be allowable to the same extent as if such costs had been incurred after the increase.
- 11.3.6 Notwithstanding any other provision of this CONTRACT, including any exhibits or attachments incorporated therein, and in order for the CITY to comply with its governing legal requirements, the CITY shall have no obligation to make any payments to the CONTRACTOR unless the CITY shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this CONTRACT. The CONTRACTOR agrees that any services provided by the CONTRACTOR, purchases made by the CONTRACTOR, or expenses incurred by the CONTRACTOR in excess of the appropriation(s) shall be free and without charge to the CITY and the CITY shall have no obligation to pay for the services, purchases, or expenses. The CONTRACTOR shall have no obligation to provide any services, provide any equipment, or incur any expenses in excess of the appropriated amount(s) until the CITY appropriates additional funds for this CONTRACT.

11.3.7 For Task Orders specifying a Lump Sum method of payment or the Hourly Billing Rate method, the CONTRACTOR shall submit to the CITY, upon the satisfactory completion of each task/milestone, an original and three (3) copies of an invoice in a format acceptable to the CITY. The CITY shall review the CONTRACTOR'S invoice and notify the CONTRACTOR of exceptions or disputed items and their dollar amount. The total invoice amount, less any exceptions or disputed items shall be considered approved by the CITY. The CITY shall pay the CONTRACTOR all amounts approved for payment after the CITY'S PROJECT MANAGER receives the CONTRACTOR'S invoice.

11.3.8 False Claims Act

The CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the California False Claims Act (Cal. Gov. Code 12650 et seq.), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

ARTICLE 12 – AMENDMENTS, CHANGES, OR MODIFICATIONS

All amendments, changes, or modifications to this CONTRACT shall be in writing and signed and approved pursuant to the provisions of Article 7 [TERM OF AGREEMENT AND TIME OF EFFECTIVENESS].

ARTICLE 13 – INDEMNIFICATION AND INSURANCE

13.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of the CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, the CONTRACTOR shall defend, indemnify, and hold harmless the CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including the CONTRACTOR'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by the CONTRACTOR, SUBCONTRACTORS, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. This provision will survive expiration or termination of this CONTRACT.

13.2 INSURANCE

During the term of this CONTRACT and without limiting the CONTRACTOR'S obligation to indemnify, hold harmless, and defend the CITY, the CONTRACTOR shall provide and maintain at its own expense a program of insurance having the coverage and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 3 [INSURANCE CONTRACTUAL REQUIREMENTS EXHIBIT] hereto). The insurance must: (1) conform to the CITY'S requirements; (2) comply with the Insurance Contractual Requirements (Form General 146 in Exhibit 3); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. The CONTRACTOR shall comply with all Insurance Contractual Requirements shown on Exhibit 3 hereto. Exhibit 3 is hereby incorporated by reference and made a part of this CONTRACT.

13.3 BONDS Risk Manager Insurance Requirements (2023)

All bonds required by the CITY shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 et seq., as amended from time to time. CONTRACTOR will be required to submit proof of insurance and payment and performance bonds for 100% of the cost of the Work Package to the Board of Public Works. CONTRACTORS are required to submit these to the Board within 5 days of the issuance of the Work Package for approval by the City Administrative Officer's Risk Manager.

ARTICLE 14 – INDEPENDENT CONTRACTORS

The CONTRACTOR is an independent contractor and not as an agent or employee of the CITY. The CONTRACTOR shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY.

ARTICLE 15 – WARRANTIES AND RESPONSIBILITY OF CONTRACTOR

15.1 The CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within the CONTRACTOR'S profession, doing the same or similar work under the same or similar circumstances.

15.2 The CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the CONTRACTOR under this AGREEMENT. The CONTRACTOR shall, at no additional cost to the CITY, correct or revise any errors, omissions, or other deficiencies in its

designs, drawings, specifications, reports, calculations, and other services.

- 15.3 The CONTRACTOR shall exhibit proper professional judgment in the use of information furnished by the CITY in Article 6 [RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY]. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, the CONTRACTOR will notify the CITY in a reasonable manner within three (3) business days after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.
- 15.4 The CONTRACTOR shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.
- 15.5 Except as specified in Article 13 [INDEMNIFICATION ARTICLE] and as otherwise provided in this AGREEMENT, the CONTRACTOR shall be and shall remain liable, in accordance with applicable law, for all damages to the CITY caused by the CONTRACTOR'S negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to the CITY, CITY-furnished data, or any third party (excepting any CONTRACTOR or SUBCONTRACTOR of any tier).

ARTICLE 16 - INTELLECTUAL PROPERTY INDEMNIFICATION

The CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the CITY, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by the CONTRACTOR, or its SUBCONTRACTORS, in performing the work under this CONTRACT; or (2) as a result of the CITY'S actual or intended use of any Work Product (as defined in Article 18 [OWNERSHIP AND LICENSE]) furnished by the CONTRACTOR, or its SUBCONTRACTORS, under this CONTRACT. The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. This provision will survive expiration or termination of this CONTRACT.

ARTICLE 17 – INTELLECTUAL PROPERTY WARRANTY

The CONTRACTOR represents and warrants that its performance of all obligations under this CONTRACT does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity, and/or proprietary information.

ARTICLE 18 – OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this CONTRACT including, without limitation, documents, materials, data, reports, manuals, specifications, artworks, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by the CONTRACTOR or its SUBCONTRACTORS under this CONTRACT (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of the CITY for its use in any manner the CITY deems appropriate. The CONTRACTOR hereby assigns to the CITY all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this CONTRACT. The CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

The CONTRACTOR agrees that a monetary remedy for breach of this CONTRACT may be inadequate, impracticable, or difficult to prove and that a breach may cause the CITY irreparable harm. The CITY may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude the CITY from seeking or obtaining any other relief to which the CITY may be entitled.

For all Work Products delivered to the CITY that are not originated or prepared by the CONTRACTOR or its SUBCONTRACTORS under this CONTRACT, the CONTRACTOR shall secure a grant, at no cost to the CITY, for a non-exclusive perpetual license to use such Work Products for any CITY purpose(s).

The CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the CITY.

Any subcontract entered into by the CONTRACTOR relating to this CONTRACT shall include this provision to contractually bind its SUBCONTRACTORS performing work under this CONTRACT such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein.

ARTICLE 19 – SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 28 [PROHIBITION AGAINST ASSIGNMENT OR DELEGATION ARTICLE].

ARTICLE 20 – CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION

All notices shall be made in writing and may be given by personal delivery, regular mail, or electronic mail. Notices sent by regular mail should be registered or certified and sent to the designated contact person for each party and addressed as follows:

To the CITY:

Contact Person: Todd Cromwell
Address: Hyperion Water Reclamation Plant
12000 Vista Del Mar
Playa Del Rey, CA 90293
Telephone: (310) 350-9172
E-mail: todd.cromwell@lacity.org

To the CONTRACTOR:

Contact Person: Jon Rasmussen
Address: 390 Alhambra Road #E
San Gabriel, CA 91775
Telephone: (626) 284-5937
E-mail: jon@thepondcompany.com

ARTICLE 21 – FORCE MAJEURE (EXCUSABLE DELAYS)

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this CONTRACT, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a SUBCONTRACTOR of the CONTRACTOR shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both the CONTRACTOR and SUBCONTRACTOR, and without any fault or negligence of either of them. In such case, the CONTRACTOR shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the SUBCONTRACTOR were obtainable from other sources in sufficient time to permit the CONTRACTOR to perform timely. As used in this CONTRACT, the term "SUBCONTRACTOR" means a subcontractor at any tier.

In the event the CONTRACTOR'S delay or failure to perform arises out of a Force Majeure Event, the CONTRACTOR agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

ARTICLE 22 – SEVERABILITY

Should any portion of this AGREEMENT be determined to be void or unenforceable, such shall be severed from the whole and the AGREEMENT will continue as modified.

ARTICLE 23 – DISPUTES

Should a dispute or controversy arise concerning provisions of this AGREEMENT or the performance of work hereunder, the parties may elect to submit such to a court of competent jurisdiction.

ARTICLE 24 – ENTIRE AGREEMENT

This AGREEMENT contains all of the agreements, representations, and understandings of the parties hereto and supersedes and/or incorporates any previous understandings, proposals, commitments, or agreements, whether oral or written, and may be modified or amended only as herein provided.

ARTICLE 25 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY, including but not limited to, laws regarding health and safety, labor and employment, wage and hours, and licensing. This CONTRACT and its performance shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. The CONTRACTOR shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this CONTRACT with no additional compensation paid to the CONTRACTOR.

In any action arising out of this CONTRACT, the CONTRACTOR consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term, or provision of this CONTRACT is held void, illegal, unenforceable, or in conflict with any federal, state, or local law or regulation having jurisdiction over this AGREEMENT, the validity of the remaining parts, terms, or provisions of this CONTRACT shall not be affected thereby.

ARTICLE 26 – CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

For the duration of this CONTRACT, the CONTRACTOR shall maintain valid Business Tax Registration Certificate(s) as required by the CITY'S Business Tax Ordinance, Section

21.1 et seq. of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

Should any such certificate(s) become suspended or revoked, it is the CONTRACTOR'S responsibility to report the matter immediately to the CITY PROJECT MANAGER.

ARTICLE 27 – WAIVER

A waiver of a default of any part, term, or provision of this CONTRACT shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

ARTICLE 28 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

The CONTRACTOR may not, unless it has first obtained the written permission of the CITY:

- A. Assign or otherwise alienate any of its rights under this CONTRACT, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this CONTRACT.

ARTICLE 29 – PERMITS

The CONTRACTOR and its directors, officers, partners, agents, employees, and SUBCONTRACTORS, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications, and other documents necessary for the CONTRACTOR'S performance of this CONTRACT and shall pay any fees required therefore. The CONTRACTOR certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to the CONTRACTOR'S performance of this CONTRACT.

ARTICLE 30 – BEST TERMS

Throughout the term of this CONTRACT, the CONTRACTOR shall offer the CITY the best terms, prices, and discounts that are offered to any of the CONTRACTOR'S customers for similar goods and services provided under this CONTRACT.

ARTICLE 31 – CLAIMS FOR LABOR AND MATERIALS

The CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this CONTRACT so as to prevent any lien or

other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produced by the CONTRACTOR hereunder) and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this CONTRACT.

ARTICLE 32 – BREACH

Except for Force Majeure, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

ARTICLE 33 – MANDATORY PROVISIONS PERTAINING TO NON-DISCRIMINATION IN EMPLOYMENT

Unless otherwise exempt, this CONTRACT is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. The CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this CONTRACT, the CONTRACTOR shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status, or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this CONTRACT by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this CONTRACT by reference and will be known as the "Equal Employment Practices" provisions of this CONTRACT.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this CONTRACT by reference and will be known as the "Affirmative Action Program" provisions of this CONTRACT.

Any subcontract entered into by the CONTRACTOR for work to be performed under this

CONTRACT must include an identical provision.

ARTICLE 34 – CHILD SUPPORT OBLIGATIONS ASSIGNMENT ORDERS

The CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, the CONTRACTOR shall fully comply with all applicable State and Federal employment reporting requirements. Failure of the CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of the CONTRACTOR to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this CONTRACT. Failure of the CONTRACTOR or principal owner to cure the default within ninety (90) days of the notice of default will subject this CONTRACT to termination for breach. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 35 – LIVING WAGE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCES

35.1 LIVING WAGE ORDINANCE

The CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 et seq., as amended from time to time. The CONTRACTOR further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision. (Exhibit 5)
[DECLARATION OF COMPLIANCE WITH LIVING WAGE ORDINANCE EXHIBIT]

35.2 SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

The CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 36 — ACCESS AND ACCOMMODATIONS

The CONTRACTOR represents and certifies that:

- A. The CONTRACTOR shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 et seq., the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 et seq., the Fair Housing Act, and its implementing regulations and any subsequent amendments, and the California Government Code Section 11135;
- B. The CONTRACTOR shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. The CONTRACTOR shall provide reasonable accommodation upon request to ensure equal access to CITY-funded programs, services, and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this CONTRACT are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

The CONTRACTOR understands that the CITY is relying upon these certifications and representations as a condition to funding this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 37 — CONTRACTOR RESPONSIBILITY ORDINANCE

The CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 et seq., as amended from time to time.

ARTICLE 38 — LOS ANGELES BUSINESS INCLUSION PROGRAM

Unless otherwise exempted prior to bid submission, the CONTRACTOR shall comply with all aspects of the Business Inclusion Program as described in the [Request for Qualifications (RFQ)], throughout the duration of this CONTRACT. The CONTRACTOR shall utilize the Regional Alliance Marketplace for Procurement (RAMP) at <https://www.rampla.org/s/> to perform and document outreach to Minority, Women, and Other Business Enterprises. The CONTRACTOR shall perform subcontractor outreach activities through RAMP. The CONTRACTOR shall not change any of its designated SUBCONTRACTORS or pledged specific items of work to be performed by these

SUBCONTRACTORS, nor shall the CONTRACTOR reduce their level of effort, without prior written approval of the CITY.

ARTICLE 39 — DISCLOSURE ORDINANCES

Unless otherwise exempt in accordance with the provisions of this Ordinance, this CONTRACT is subject to the Slavery Disclosure Ordinance, Section 10.41 et seq., of the Los Angeles Administrative Code, as may be amended from time to time. The CONTRACTOR certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision. Exhibit 4 [SLAVERY DISCLOSURE ORDINANCE] is attached hereto and incorporated herein by this reference.

The CONTRACTOR shall comply with Los Angeles Administrative Code Section 10.50 et seq., 'Disclosure of Border Wall Contracting.' The City or the Department of Public Works (DPW) may terminate this CONTRACT at any time if the City or DPW determines that the CONTRACTOR failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

ARTICLE 40 — CONTRACTOR PERFORMANCE EVALUATION ORDINANCE

At the end of this AGREEMENT, the CITY will conduct an evaluation of the CONTRACTOR'S performance. The CITY may also conduct evaluations of the CONTRACTOR'S performance during the term of the AGREEMENT. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the CONTRACTOR assigns to the AGREEMENT. A contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed fourteen (14) CALENDAR DAYS to respond. The CITY will use the final CITY evaluation, and any response from the CONTRACTOR, to evaluate proposals and to conduct reference checks when awarding other service contracts.

ARTICLE 41 — MUNICIPAL LOBBYING ORDINANCE

The CONTRACTOR for the CITY shall submit a certification, on a form prescribed by the City Ethics Commission, that the CONTRACTOR acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance, Exhibit 11 [MUNICIPAL LOBBYING ORDINANCE EXHIBIT], if the CONTRACTOR qualifies as a lobbying entity under the Ordinance. The exemptions contained in Los Angeles Administrative Code Section 10.40.4 shall not

apply to this subsection.

ARTICLE 42 — FIRST SOURCE HIRING ORDINANCE

The CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 43 — COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12) FOR MEASURE H/CONTRACTOR CONTRIBUTIONS/FUNDRAISING

Unless otherwise exempt, if this CONTRACT is valued at \$100,000 or more and requires approval by an elected CITY office, the CONTRACTOR, CONTRACTOR'S principals, and the CONTRACTOR'S SUBCONTRACTORS expected to receive at least \$100,000 for performance under this CONTRACT, and the principals of those SUBCONTRACTORS (the "Restricted Persons") shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles the CITY to terminate this CONTRACT and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected CITY officials or candidates for elected CITY office for twelve months after this CONTRACT is signed. Additionally, a CONTRACTOR subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any CONTRACTOR subject to Charter Section 470(c)(12) shall include the following notice in any contract with any SUBCONTRACTOR expected to receive at least \$100,000 for performance under this CONTRACT:

"Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # _____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles ("CITY") officials and candidates for elected CITY office for twelve months after the CITY Contract is signed. You are required to provide the names and contact information of your principals to the CONTRACTOR and to amend that information within ten business days if it changes during the twelve-month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

ARTICLE 44 – COMPLIANCE WITH THE IRAN CONTRACTING ACT OF 2010

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with the CITY for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit." (Exhibit XX)

ARTICLE 45 – INTEGRATED CONTRACT

This CONTRACT sets forth all of the rights and duties of the parties with respect to the subject matter of this CONTRACT and replaces any and all previous contracts or understandings, whether written or oral, relating thereto. This CONTRACT may be amended only as provided for in the provisions of Article 12 [AMENDMENTS, CHANGES, OR MODIFICATIONS] hereof.

ARTICLE 46 – DATA PROTECTION

- A. The CONTRACTOR shall protect, using the most secure means and technology that is commercially available, CITY-provided data or consumer-provided data acquired in the course and scope of this CONTRACT, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). The CONTRACTOR shall notify the CITY in writing as soon as reasonably feasible, and in any event within twenty-four (24) hours, of the CONTRACTOR'S discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. The CONTRACTOR shall begin remediation immediately. The CONTRACTOR shall provide daily updates, or more frequently if required by the CITY, regarding findings and actions performed by the CONTRACTOR until the Data Breach or Security Incident has been effectively resolved to the CITY'S satisfaction. The CONTRACTOR shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with the CITY. At the CITY'S sole discretion, the CITY and its authorized agents shall have the right to lead or participate in the investigation. The CONTRACTOR shall cooperate fully with the CITY, its agents, and law enforcement.
- B. If the CITY is subject to liability for any Data Breach or Security Incident, then the CONTRACTOR shall fully indemnify and hold harmless the CITY and defend against any resulting actions.

ARTICLE 47 – LOCAL BUSINESS PREFERENCE ORDINANCE

The CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 48 – CITY CONTRACTOR'S USE OF CRIMINAL HISTORY FOR CONSIDERATION OF EMPLOYMENT APPLICATIONS

The CONTRACTOR shall comply with the City Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 49 – COMPLIANCE WITH IDENTITY THEFT LAWS AND PAYMENT CARD DATA SECURITY STANDARDS

The CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to customers. The CONTRACTOR also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program, or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, the CONTRACTOR shall verify proper truncation of receipts in compliance with FACTA.

ARTICLE 50 – COMPLIANCE WITH CALIFORNIA PUBLIC RESOURCES CODE SECTION 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor if the person has been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, the CONTRACTOR shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by the CITY. The CONTRACTOR is required to have all employees, volunteers, and SUBCONTRACTORS (including all employees and volunteers of any SUBCONTRACTOR) of the CONTRACTOR working on the premises to pass a

fingerprint and background check through the California Department of Justice at the CONTRACTOR'S sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

ARTICLE 51 – POSSESSORY INTERESTS TAX

Rights granted to the CONTRACTOR by the CITY may create a possessory interest. The CONTRACTOR agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, the CONTRACTOR shall pay the property tax. The CONTRACTOR acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

ARTICLE 52 – CONFIDENTIALITY

All documents, information, City Data (as that term is defined in Article 46) and materials provided to the CONTRACTOR by the CITY or developed by the CONTRACTOR pursuant to this CONTRACT (collectively "Confidential Information") are confidential. The CONTRACTOR shall not provide, and shall prohibit its employees and subcontractors from providing or disclosing, or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by the CITY or as required by law. The CONTRACTOR shall immediately notify the CITY of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this CONTRACT.

ARTICLE 53 – COUNTERPARTS

This AGREEMENT may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by the CITY) and sent by e-mail shall be deemed original signatures.

ARTICLE 54 – CONTRACTOR DATA REPORTING

If CONTRACTOR is a for-profit, privately owned business, CONTRACTOR shall, within 30 days of the effective date of the CONTRACT and on an annual basis thereafter (i.e.,

within 30 days of the annual anniversary of the effective date of the CONTRACT), report the following information to CITY via the Regional Alliance Marketplace for Procurement ("RAMP") or via another method specified by CITY: Contractor's and any Subcontractor's annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner ("Contractor/Subcontractor Information"). CONTRACTOR shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by CITY.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year written below.

CITY OF LOS ANGELES

By: _____

Title: Commissioner, Board of Public Works

Date: _____

By: _____

Title: Commissioner, Board of Public Works

Date: _____

THE POND COMPANY

By: Jon Rasmussen

Title: Owner/President

Date: _____

APPROVED AS TO FORM:

HYDEE FELDSTEIN SOTO, City Attorney

By: _____
Virginia Choi

Title: Deputy City Attorney

Date: _____

ATTEST:

PETTY F. SANTOS, Interim City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

**SERVICE AGREEMENT BETWEEN
THE CITY OF LOS ANGELES
AND
FAR-EAST LANDSCAPE AND MAINTENANCE INC.
FOR
LA SANITATION ENVIRONMENTAL LANDSCAPING
AND SITE SERVICES**



City of Los Angeles
Department of Public Works
Los Angeles Sanitation and Environment

Barbara Romero, Director and General Manager
Nicole Bernson, Assistant Director

Hyperion Water Reclamation Plant (HWRP)
Hi Sang Kim, Acting Plant Manager

LA SANITATION ENVIRONMENTAL LANDSCAPING AND SITE
SERVICES

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LA SANITATION ENVIRONMENTAL LANDSCAPING AND SITE
SERVICES

This AGREEMENT, made and entered into by and between the City of Los Angeles, a municipal corporation acting by order of and through its Board of Public Works (hereinafter called the "CITY") and FAR-EAST LANDSCAPE AND MAINTENANCE SERVICES, INC. (hereinafter referred to as "CONTRACTOR"); is set forth as follows:

WITNESSETH

WHEREAS, the CITY has a need for landscaping and site services at Department of Public Works, Bureau of Sanitation (LASAN) facilities; and

WHEREAS, the CITY is committed to maintaining, preserving, and upgrading its landscapes and sites; and

WHEREAS, the CONTRACTOR'S services are deemed to be vital to meet the CITY's commitment to maintain, preserve, and upgrade its landscapes and sites; and

WHEREAS, the CITY plans to utilize FAR-EAST LANDSCAPE AND MAINTENANCE SERVICES, INC. to provide landscaping and site services, during the course of a nine (9)-year period (five years and two 2-year renewal options); and

WHEREAS, on May 12, 2021, the Board of Public Works authorized the Bureau of Sanitation (LASAN) to distribute a Request for Qualifications (RFQ) for Landscaping and Site services and to negotiate a contract with a qualified proposer; and

WHEREAS, on August 4, 2021, LASAN received seven (7) proposals in response to the RFQ; and

WHEREAS, FAR-EAST LANDSCAPE AND MAINTENANCE SERVICES, INC. was deemed a qualified proposer with the experience and expertise necessary to perform said services as determined by CITY staff based on the evaluation criteria set forth in the RFQ; and

WHEREAS, FAR-EAST LANDSCAPE AND MAINTENANCE SERVICES, INC. meets the state licensing requirements to perform professional landscape services; and

WHEREAS, the services to be provided by FAR-EAST LANDSCAPE AND MAINTENANCE SERVICES, INC. are of an expert and technical nature; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the terms and conditions of this AGREEMENT, it is understood and agreed by and between the parties hereto as follows:

ARTICLE 1 – CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this CONTRACT have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this CONTRACT. The language of this CONTRACT shall be construed according to its fair meaning and not strictly for or against the CITY or CONTRACTOR. The word "CONTRACTOR" includes the party or parties identified in this CONTRACT. The singular shall include the plural and if there is more than one CONTRACTOR, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

ARTICLE 2 – DEFINITIONS

It is understood that the following words and phrases are used herein; each shall have the meaning set forth opposite the same:

AGREEMENT/CONTRACT	This contractual agreement between the CITY and FAR-EAST LANDSCAPE AND MAINTENANCE SERVICES, INC. for professional landscape services.
BOARD	The Board of Public Works of the City of Los Angeles.
CALENDAR DAYS	Each day beginning at 12:01 a.m. and ending twenty-four (24) hours thereafter at 12:00 midnight.

CITY	The City of Los Angeles, Board of Public Works or its subordinate Bureaus. Depending on the context in which it is used, the term CITY may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles who is authorized to represent the City of Los Angeles in manners concerning this document.
CITY PROJECT MANAGER	The CITY'S designated representative for all issues related to this AGREEMENT
CONTRACTOR / CONSULTANT	FAR-EAST LANDSCAPE AND MAINTENANCE SERVICES, INC.
CONTRACTOR SERVICES	All services to be provided by the CONTRACTOR specified in this AGREEMENT
DIRECTOR	Director of LASAN or his/her designated representative
LARGE WORK PACKAGE	Project valued at greater than \$50,000
LASAN	Bureau of Sanitation, Department of Public Works, City of Los Angeles
MBE/WBE/SBE/EBE/DVBE/OBE	Minority/Women/Small/Emerging/Disabled Veteran/Other Business Enterprises
NOTICE TO PROCEED	Notice from the CITY to the CONTRACTOR to begin the project
SAFETY DATA SHEET (SDS)	Lists hazardous properties, protective measures, and the safe handling of individual chemicals
SMALL WORK PACKAGE	Project valued at \$50,000 and less
SUBCONTRACTOR	An individual or company having an agreement with the CONTRACTOR to provide services, equipment, or materials to the CONTRACTOR

TASK ORDER SOLICITATION (TOS)	Describes project scope with a request for CONTRACTOR(S) to submit a proposal
WORK PACKAGE	A Work Package is a defined Task Order Solicitation (TOS) to perform services with a specified duration

ARTICLE 3 – PROJECT DESCRIPTION

LASAN owns and operates four (4) Water Reclamation Plants, more than 40 Clean Water Conveyance facilities, and various other facilities under the Watershed Program. These facilities require landscaping and site services such as tree trimming, maintenance of water features and irrigation systems, renovation projects utilizing native and drought tolerant plants, site hardscape, landscape repair, and other types of landscape and site services. Such services are vital to continually upkeep and modernize City facilities.

ARTICLE 4 – RESPONSIBILITIES OF AND SERVICES/TASKS TO BE PERFORMED BY THE CONTRACTOR

- 4.1 The CONTRACTOR shall perform the services described in Article 4.4 [SCOPE OF SERVICES]. The CONTRACTOR shall perform such work with a degree of skill and diligence normally employed by professional landscaping contractors performing the same or similar services.
- 4.2 The CONTRACTOR warrants that the services will be performed consistent with generally accepted industry standards and that all services shall be performed in accordance with the specific WORK PACKAGE, plans, technical specifications, and other related documents.

4.3 Maintenance of Records

The CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this CONTRACT, in their original form or as otherwise approved by the CITY. These records shall be retained for a period of no less than four (4) years from the later of the following: (1) the final payment made by the CITY, (2) the expiration of this CONTRACT, or (3) termination of this CONTRACT. The records will be subject to examination and audit by authorized CITY personnel or the CITY'S representatives at any time. The CONTRACTOR shall provide any reports requested by the CITY regarding the performance of this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, the CONTRACTOR may, upon the CITY'S written approval, submit the required information to the CITY in an electronic format, e.g. USB flash drive, at the expiration or termination of this CONTRACT.

4.4 Scope of Services

Services shall include, but not limited to, the following:

A. General Landscape / Hardscape Maintenance Services:

- General landscape care (plants and irrigation) including California native, water-wise and drought tolerant plantings
- Maintenance and care of hardscape areas, earthen pathways and facility amenities
- As needed additional seasonal labor support and emergency landscape and site support
- Brush clearance including green waste recycling and disposal of non-recyclable materials
- Transportation and surface application of wood mulch as needed
- Soil conditioning – transporting and incorporating soil amendments and fertilizers
- Hydro-seeding applications

B. Landscape Feature Maintenance, Construction and Repair:

- Renovation and maintenance of lakes, ponds, streams, display fountains, water features, dry wells, bioswales, rain and roof gardens, permeable walkways, etc
- Landscape features construction, renovation and repair
- Site hardscape/concrete repair and replacement
- Irrigation system (potable and reclaimed water) installation, renovation and repair
- Conversion of existing landscaped areas into water wise drought tolerant landscapes
- Construction site debris clean up, off site recycling and/or disposal of non-recyclable materials

C. Tree Trimming:

- Professional tree pruning/shaping, plant material trimming and off site recycling of green waste

D. Herbicide and Pesticide Services:

- General Criteria for Recommendations (Type, use, and frequency):
 - A. No restricted chemicals shall be used unless the amount used does not require a use permit. No restricted chemicals are currently used at LASAN sites.
 - B. No chemicals requiring more than 24 hours re-entry shall be used.
- Site Visits and Chemical Application:
 - A. Conduct one (1) annual visit, at each predetermined site, for the purpose of developing recommendations for, among other things, the type and number of chemical applications to be used and applied by the CONTRACTOR'S staff during the following one-year period. The current recommendation is approximately three (3) chemical applications per year per site. Recommendations for chemicals that are not currently in use shall be added as needed, and recommendations shall be updated annually.
 - B. A licensed pest control advisor, with qualifications in landscape horticulture, right of way, and aquatics, to

conduct up to six (6) on-call visits annually, at each predetermined site, as determined by the CITY CONTRACT PROJECT MANAGER or designee. Each site visit may be for more than one purpose, and require more than one recommendation. Each recommendation shall be written for up to one year's use and renewed with all other annual recommendations. Site visits and recommendation(s) must be provided within seventy-two (72) hours upon written request by the CITY CONTRACT PROJECT MANAGER. After 72 hours, if the service has not been provided, the CITY will proceed as necessary to provide the required service and charge all associated costs to the CONTRACTOR.

- C. Safety training and monitoring, including all costs associated therewith, shall be the sole responsibility of the CONTRACTOR.
- Services of a State of California licensed pest control advisor is required:
 - A. Pest Control Advisor – CONTRACTOR shall provide a pest control advisor who shall provide recommendations for all chemical applications as part of the CONTRACT. The advisor shall have an active Pest Control Advisors License for Category "B" (Landscape Maintenance) from the State of California, Department of Pesticide Regulation. Safety Data Sheets (SDS's) shall be provided with each pest control recommendation. Two (2) copies of all recommendations and SDS's shall be supplied to the CITY CONTRACT PROJECT MANAGER and the CONTRACTOR'S staff, and made available at all times to review. Types of chemicals used are, but not limited to: pesticides, herbicides, and fungicides.
- Reporting as required by the Los Angeles County Agricultural Commissioner, and any required accountability for recordkeeping of pesticide, herbicide, and fungicide applications.

Work in all service categories shall be performed in accordance with the specific WORK PACKAGES, plans, technical specifications, and other related documents.

Services shall be performed under one of the following WORK PACKAGE categories:

- SMALL WORK PACKAGE: Services less than or equal to \$50,000 for the duration of the work or CONTRACT

- **LARGE WORK PACKAGE:** Services greater than \$50,000 for the duration of the work or CONTRACT

CONTRACTORS were required to select a WORK PACKAGE category when completing their Statement of Qualification (SOQ). FAR-EAST LANDSCAPE AND MAINTENANCE SERVICES, INC. selected the SMALL WORK PACKAGE.

A WORK PACKAGE is awarded pursuant to a defined Task Order Solicitation (TOS) to perform services for a specified duration. WORK PACKAGES can either be a project requiring routine work to last for the duration of the CONTRACT or an "As-Needed" type WORK PACKAGE that can be completed in days, weeks, months, or years. Contractors cannot perform services outside of their selected category, unless specifically requested by the CITY in writing, based on the CITY's particular needs.

It is the intention of CITY to establish an on-call rotating list under each WORK PACKAGE category with a maximum of ten (10) CONTRACTORS each. CONTRACTORS will be placed in random order to initially establish an on-call list under each WORK PACKAGE category.

Assignment of Work

For SMALL WORK PACKAGES equal to or less than \$50,000, the CITY will issue a TOS to the first CONTRACTOR on the list qualified to perform the work. Negotiations on the terms for the project will follow, specifically on the scope of work, deliverables, schedule, and costs. If an agreement cannot be reached with the first CONTRACTOR, the CONTRACTOR will be rotated to the bottom of the list for the purpose of subsequent work assignments. The CITY reserves the right to negotiate with the next qualified CONTRACTOR on the list and so on until an agreement is reached. The successful CONTRACTOR will then be rotated to the bottom of the list for the purpose of subsequent work assignments. Once an agreement is reached, the CITY will issue a NOTICE TO PROCEED. If an agreement cannot be reached with the first CONTRACTOR that submits a proposal, the CITY reserves the right to negotiate with the next CONTRACTOR that submitted a proposal and so on until an agreement is reached. Under special circumstances, including where no CONTRACTOR responds to a TOS, the CITY reserves the right to require one or more CONTRACTORS to submit a proposal in response to a TOS, and/or to award the project to any CONTRACTOR of its choosing, regardless of the size, that the CITY deems appropriate.

The CITY reserves the right to advertise any project regardless of size to

all CONTRACTORS on the appropriate list. Additionally, and under urgent and special conditions, the CITY may choose to award the project to any CONTRACTOR of its choosing, regardless of the size, that the CITY deems appropriate.

4.5 CONTRACTOR Schedule of Services and Costs:

POSITION	RATE (\$/HR.)
Supervisor	\$65
Laborer	\$50
Pest Control Advisor	\$120
Tree Trimmer	\$85
Additional Personnel	\$50
Seasonal	\$50

ARTICLE 5 – KEY CONTRACTOR PERSONNEL

- 5.1 The CONTRACTOR designates the following person to represent the CONTRACTOR in all matters pertaining to this AGREEMENT:

Name, Title: Tony Moon, President
Address: 6201 ½ Van Nuys Blvd. #B Van
Nuys, CA 91401 Telephone: (818) 235-7762
E-mail: tony@fareastlandscape.com

Additional technical specialists shall be assigned subject to the CITY PROJECT MANAGER'S approval.

- 5.2 The CONTRACTOR agrees that personnel assigned to these positions at the commencement of services under this AGREEMENT shall serve in these positions as long as required by the CONTRACT, and the CONTRACTOR shall not change personnel assigned to these positions without the prior written consent and approval of the CITY'S PROJECT MANAGER, whose consent shall not be withheld unreasonably.

- 5.3 Unless otherwise approved by the CITY, the CONTRACTOR shall use its own employees to perform the services described in this CONTRACT. The CITY has the right to review and approve any personnel who are assigned to work under this CONTRACT. The CONTRACTOR shall remove personnel from performing work under this CONTRACT if requested to do so by the CITY.
- 5.4 The CONTRACTOR shall not use SUBCONTRACTORS to assist in the performance of this CONTRACT without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, the CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT and paying all SUBCONTRACTORS. The CITY has the right to approve the CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of any SUBCONTRACTOR. The CITY does not have any obligation to pay the CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and any SUBCONTRACTOR.

ARTICLE 6 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

The CITY designates Todd Cromwell as its CITY PROJECT MANAGER to represent the CITY in all matters within the scope of this AGREEMENT relating to the conduct and approval of the work to be performed. Whenever the term "approval of CITY," "consult with CITY," "confer with CITY," or similar terms are used, they shall refer to the CITY PROJECT MANAGER. The CITY PROJECT MANAGER may designate an assistant to act in his/her stead. The CITY may designate another CITY employee to succeed Todd Cromwell as the CITY PROJECT MANAGER. The CONTRACTOR will be notified in writing in such event.

The CITY shall furnish, without charge, facilities and resources available to the CONTRACTOR as deemed reasonably necessary and appropriate by the CITY.

ARTICLE 7 – TERM OF AGREEMENT AND TIME OF EFFECTIVENESS

The term of this AGREEMENT shall be for five (5) years with two (2) two-year renewal options to be exercised at the CITY's sole discretion, from the date of full execution unless terminated as provided under Article 9 [TERMINATION ARTICLE] or extended by a duly approved amendment to this AGREEMENT and signed by the parties.

Unless otherwise provided, this CONTRACT shall take effect when all of the following events have occurred:

- A. This CONTRACT has been signed on behalf of the CONTRACTOR by the person or persons authorized to bind the CONTRACTOR;
- B. This CONTRACT has been approved by the City Council or by the BOARD, officer, or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this CONTRACT as to form; and
- D. This CONTRACT has been signed on behalf of the CITY by the person designated by the City Council, or by the BOARD, officer, or employee authorized to enter into this CONTRACT.

ARTICLE 8 – SUSPENSION

At the CITY'S sole discretion, the CITY may suspend any or all services provided under this CONTRACT by providing the CONTRACTOR with a written notice of suspension. Upon receipt of the notice of suspension, the CONTRACTOR shall immediately cease the services suspended and shall not incur any additional obligations, costs, or expenses to

the CITY until the CITY gives written notice to recommence the services.

ARTICLE 9 – TERMINATION

9.1 Termination for Convenience

The CITY may terminate this CONTRACT, in whole or in part, for the CITY'S convenience at any time by providing the CONTRACTOR thirty days (30) written notice. Upon receipt of the notice of termination, the CONTRACTOR shall immediately take action not to incur any additional obligations, costs, or expenses, except as may be necessary to terminate its activities. The CITY shall pay the CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by the CONTRACTOR to effect the termination. Thereafter, the CONTRACTOR shall have no further claims against the CITY under this CONTRACT. All finished and unfinished documents and materials procured for or produced under this CONTRACT, including all intellectual property rights the CITY is entitled to, shall become CITY property upon the date of the termination. The CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

9.2 Termination for Breach of Contract

9.2.1 Except as provided in Article 21 [FORCE MAJEURE/EXCUSABLE DELAYS ARTICLE], if the CONTRACTOR fails to perform any of the provisions of this CONTRACT or so fails to make progress as to endanger timely performance of this CONTRACT, the CITY may give the CONTRACTOR written notice of the default. The CITY'S default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of the CITY. Additionally, the CITY'S default notice may offer the CONTRACTOR an opportunity to provide the CITY with a plan to cure the default, which shall be submitted to the CITY within the

time period allowed by the CITY. At the CITY'S sole discretion, the CITY may accept or reject the CONTRACTOR'S plan. If the default cannot be cured or if the CONTRACTOR fails to cure within the period allowed by the CITY, then the CITY may terminate this CONTRACT due to the CONTRACTOR'S breach of this CONTRACT.

9.2.2 If the default under this CONTRACT is due to the CONTRACTOR'S failure to maintain the insurance required under this CONTRACT, the CONTRACTOR shall immediately: (1) suspend performance of any services under this CONTRACT for which insurance was required; and (2) notify its employees and SUBCONTRACTORS of the loss of insurance coverage and the CONTRACTOR'S obligation to suspend performance of services. The CONTRACTOR shall not recommence performance until the CONTRACTOR is fully insured and in compliance with the CITY'S requirements.

9.2.3 If a federal or state proceeding for relief of debtors is undertaken by or against the CONTRACTOR, or if the CONTRACTOR makes an assignment for the benefit of creditors, then the CITY may immediately terminate this CONTRACT.

9.2.4 If the CONTRACTOR engages in any dishonest conduct related to the performance or administration of this CONTRACT or violates the CITY'S laws, regulations, or policies relating to lobbying, then the CITY may immediately terminate this CONTRACT.

9.2.5 Acts of Moral Turpitude

a) The CONTRACTOR shall immediately notify the CITY if the CONTRACTOR or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").

b) If the CONTRACTOR or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to an Act of Moral Turpitude, the CITY may immediately terminate this CONTRACT.

c) If the CONTRACTOR or a Key Person is charged with or indicted for an Act of Moral Turpitude, the CITY may terminate this CONTRACT after providing the CONTRACTOR an opportunity to present evidence of the CONTRACTOR'S ability to perform under the terms of this CONTRACT.

- d) Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in the California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elder abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.
- e) For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this CONTRACT, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of the CONTRACTOR.

- 9.2.6 In the event the CITY terminates this CONTRACT as provided in this section, the CITY may procure, upon such terms and in the manner as the CITY may deem appropriate, services similar in scope and level of effort to those so terminated and the CONTRACTOR shall be liable to the CITY for all of its costs and damages, including, but not limited to, any excess costs for such services.
- 9.2.7 If, after notice of termination of this CONTRACT under the provisions of this section, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this section or that the default was excusable under the terms of this CONTRACT, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
- 9.2.8 The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT.
- 9.2.9 In the event that this CONTRACT is terminated, the CONTRACTOR shall immediately notify all employees and SUBCONTRACTORS and shall notify in writing all other parties contracted with under the terms of this CONTRACT within five (5) working days of the termination.

ARTICLE 10 – SUBCONTRACT APPROVAL

All subcontracts that are one half of one percent (0.5%) of the total CONTRACT amount or \$10,000, whichever is greater, shall require the prior approval of the CITY. A copy of all subcontracts shall be submitted to the CITY PROJECT MANAGER showing the SUBCONTRACTOR'S name and dollar amount of each subcontract. Wholly-owned subsidiaries of the CONTRACTOR shall not be considered SUBCONTRACTORS/SUBCONSULTANTS. The CONTRACTOR shall not substitute SUBCONTRACTORS listed in this AGREEMENT (Exhibit 01, Schedule A) without the prior written approval of the CITY. The CONTRACTOR shall not add SUBCONTRACTORS to assist in the performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, the CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT. The CITY has the right to approve the CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of SUBCONTRACTORS. The CITY does not have any obligation to pay the CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS.

ARTICLE 11 - COMPENSATION, INVOICING, AND PAYMENT

Definitions:

- 11.1 "Cost" as used in this Article is defined as the sum of: (1) Hourly Billing Rates; (2) Overhead (3) Profit; (4) Markup (Other Direct Costs and/or Subcontractor Expenses); as defined below. "Hourly Billing Rates" shall be at the rates approved by the CITY PROJECT MANAGER, to be charged by the CONTRACTOR for employees' time directly chargeable to their performance of the project work. Any adjustments to the CONTRACTOR'S Hourly Billing Rate shall be in accordance with established LASAN policies existing at the time the adjustment is approved. Hourly Billing Rate increases are limited to once per year, per employee, on the anniversary date of the CONTRACTOR'S AGREEMENT execution and are subject to the approval of the CITY. In no case shall the "Hourly Billing Rate" exceed the actual Hourly Rate paid to the employee.

Any adjustment to the SUBCONTRACTORS' salaries and Hourly Billing Rates shall be reviewed and approved by the CITY PROJECT MANAGER prior to invoicing. Adjustments to the SUBCONTRACTORS' salaries and Hourly Billing Rates may be increased one time per year, per employee, on the anniversary date of the CONTRACTOR'S AGREEMENT execution. Any such increases shall be in

accordance with established LASAN policy at the time the adjustment is approved.

- 11.2 "Other Direct Cost" includes those costs of the CONTRACTOR directly identifiable to or incurred in the performance of services hereunder, including but not limited to reproduction, freight, messenger service, travel (in accordance with established CITY policies), equipment owned or rented by the CONTRACTOR (any equipment purchased and paid for under this project shall become the property of the CITY), auto mileage charges (based on IRS allowable amounts), materials, permits, third party inspection or evaluation fees, sales tax, and supplies used in the work. Communication expenses, cost of office space, equipment, and supplies furnished to CITY personnel at the CONTRACTOR'S location shall be paid by the CITY. The CITY shall receive the full benefit of any free travel, frequent flyer mileage, discounts and/or any other advantages which are acquired by the CONTRACTOR as a result of CITY-sponsored travel.
- 11.3 "Subcontractor Expenses" shall be the actual amount paid by the CONTRACTOR to the SUBCONTRACTOR for their services to the CITY plus an administrative fee of five percent (5%),
- 11.4 "Profit" shall be limited to five percent (5%) and shall be applied to the "Hourly Billing Rates" and "Materials and Supplies".
- 11.5 "Overhead" shall be five percent (5%).
- 11.6 "Markup" shall be five percent (5%) applied to "Subcontractor Expenses" and "Other Direct Costs".

Table 1.

LASAN	Overhead Rate	Profit (%)	Mark-up	
			Subcontractor	Direct Costs
LASAN (Original)	10%	5%	10%	Cost + 10%
LASAN (Negotiated)	5%	5%	5%	Cost + 5%

- 11.7 Costs incurred by the CONTRACTOR prior to the actual date of full execution of this AGREEMENT shall only be payable to the CONTRACTOR if said costs were incurred in completing any task specifically authorized by this AGREEMENT and said costs are reviewed and approved by the CITY in writing and said approval for payment occurs after this AGREEMENT is fully executed. In no event shall interest be owed on any costs incurred prior to the actual date of full execution of this AGREEMENT.
- 11.8 Exhibit 16 [PROJECT SERVICES COST PROPOSAL], attached hereto and incorporated herein by this reference, shall be the format used for the estimated total cost by task for each Task Order. For Task Orders specifying a Cost Reimbursement Plus Profit compensation method, the Project Services Cost Proposal shall be based upon the estimated hours of labor at estimated direct labor rates, the allocated indirect expenses, other direct costs, and profit. For Task Orders specifying a Lump Sum compensation method, the Project Services Cost Proposal shall set forth the total project cost and the appropriate payment milestones.
- 11.9 Hourly Billing Rate is a method of compensation whereby the CONTRACTOR is compensated on an hourly basis pursuant to established Hourly Billing Rates set forth in Exhibit 15 [fee schedule]. The hourly billing rates shall be approved by the CITY PROJECT MANAGER for the CONTRACTOR employees' time directly chargeable to their performance of the project work and includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the CONTRACTOR. Payments shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Project Task Order.
- 11.10 The CITY will not pay for the CONTRACTOR'S nor SUBCONTRACTOR'S personnel for invoice preparation. The CITY will not pay for the CONTRACTOR'S nor SUBCONTRACTOR'S communication expenses and computer time charges.

11.2.0 Compensation

The CONTRACTOR agrees to perform the work specified in Article 4 [RESPONSIBILITIES AND SERVICES/TASKS TO BE PERFORMED BY THE CONTRACTOR], and the CITY shall compensate the CONTRACTOR either on a Lump Sum basis, a Cost Reimbursement Plus Profit basis, or an Hourly Billing Rate basis upon mutual written agreement. The CITY shall designate the compensation method in the Task Orders to be issued under this AGREEMENT. If the Task Order specifies the compensation as being on a Cost Reimbursement Plus Profit or Hourly Billing Rate basis, payment shall be made in accordance with the Task Cost Estimates to be provided for CITY approval prior to issuance of Notice to Proceed for any task under this AGREEMENT. Hourly rates, SUBCONTRACTOR fees, and other direct/indirect charges shall be in accordance with rates set herein. Individuals who the CONTRACTOR wishes to add to the project must have their compensation rate approved by the CITY'S PROJECT MANAGER, and a revised Scope of Services must be prepared as evidence of this addition. The total cost ceiling shall be stated in the Task Order.

If the Task Order specifies the compensation as being on a Lump Sum basis, payment shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Task Order. The total cost ceiling shall be stated in the Task Order.

The total cost ceiling for this AGREEMENT is \$14,400,000.

11.3.1 Invoicing and Payment

11.3.2 For Task Orders specifying a Cost Reimbursement Plus Profit method of payment, the CONTRACTOR shall, once each month, submit to the CITY an original and three (3) copies of an invoice in a format acceptable to the CITY which will include all costs and a proportionate amount of profit due the CONTRACTOR for services provided during the preceding month. Payments shall be made upon the submission of a complete and accurate invoice and supporting documentation. The CITY shall review the CONTRACTOR'S invoice in accordance with the CITY's review procedures. The CITY shall make a good faith effort to process payments in a timely manner.

11.3.3 Invoices shall be prepared in such form and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be reasonably required by the CITY to establish the amount of such invoices as allowable expenses. The CONTRACTOR shall submit a Subcontractor

Utilization Form, Exhibit 2 [Schedule B, MBE/WBE/SBE/EBE/DVBE/OBE UTILIZATION PROFILE], as part of the monthly invoice, listing current MBE/WBE/SBE/EBE/ DVBE/OBE amounts invoiced as part of the invoicing procedures. The CONTRACTOR must provide an explanation for any item that falls short of the planned utilization with specific plans and recommendations for recovering any shortfalls in utilization. No such invoices shall be paid without the Subcontractor Utilization Form attachment. All invoices shall be subject to audit for a period of four (4) years from the termination of this AGREEMENT.

- 11.3.4 The CITY shall not be obligated to reimburse the CONTRACTOR for costs incurred in excess of the [Project Services Cost Proposal] set forth. The CONTRACTOR shall not be obligated to continue performance (including actions under the temporary stop work or termination clauses) or otherwise incur costs in excess of the Project Services Cost Proposal unless and until the CITY shall have notified the CONTRACTOR in writing that such Project Services Cost Proposal has been increased and shall have specified in such notice an estimated Project Services Cost Proposal, which shall thereupon constitute the cost performance of this AGREEMENT. In the absence of the specified notice, the CITY shall not be obligated to reimburse the CONTRACTOR for any costs in excess of the Project Services Cost Proposal set forth, whether those costs were incurred during the course of the AGREEMENT or as a result of termination.
- 11.3.5 When and to the extent that the Project Services Cost Proposal has been increased, any costs incurred by the CONTRACTOR in excess of the Project Services Cost Proposal for any Task Order, prior to such increase, shall be allowable to the same extent as if such costs had been incurred after the increase.
- 11.3.6 Notwithstanding any other provision of this CONTRACT, including any exhibits or attachments incorporated therein, and in order for the CITY to comply with its governing legal requirements, the CITY shall have no obligation to make any payments to the CONTRACTOR unless the CITY shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this CONTRACT. The CONTRACTOR agrees that any services provided by the CONTRACTOR, purchases made by the CONTRACTOR, or expenses incurred by the CONTRACTOR in excess of the appropriation(s) shall be free and without charge to the CITY and the CITY shall have no obligation to pay for the services, purchases, or expenses. The CONTRACTOR shall have no obligation to provide any services, provide any equipment, or incur any expenses in excess of the appropriated amount(s) until the CITY appropriates additional funds for this CONTRACT.

11.3.7 For Task Orders specifying a Lump Sum method of payment or the Hourly Billing Rate method, the CONTRACTOR shall submit to the CITY, upon the satisfactory completion of each task/milestone, an original and three (3) copies of an invoice in a format acceptable to the CITY. The CITY shall review the CONTRACTOR'S invoice and notify the CONTRACTOR of exceptions or disputed items and their dollar amount. The total invoice amount, less any exceptions or disputed items shall be considered approved by the CITY. The CITY shall pay the CONTRACTOR all amounts approved for payment after the CITY'S PROJECT MANAGER receives the CONTRACTOR'S invoice.

11.3.8 False Claims Act

The CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the California False Claims Act (Cal. Gov. Code 12650 et seq.), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

ARTICLE 12 – AMENDMENTS, CHANGES, OR MODIFICATIONS

All amendments, changes, or modifications to this CONTRACT shall be in writing and signed and approved pursuant to the provisions of Article 7 [TERM OF AGREEMENT AND TIME OF EFFECTIVENESS].

ARTICLE 13 – INDEMNIFICATION AND INSURANCE

13.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of the CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, the CONTRACTOR shall defend, indemnify, and hold harmless the CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including the CONTRACTOR'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by the CONTRACTOR, SUBCONTRACTORS, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of the CITY provided in this section shall not be

exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. This provision will survive expiration or termination of this CONTRACT.

13.2 INSURANCE

During the term of this CONTRACT and without limiting the CONTRACTOR'S obligation to indemnify, hold harmless, and defend the CITY, the CONTRACTOR shall provide and maintain at its own expense a program of insurance having the coverage and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 3 [INSURANCE CONTRACTUAL REQUIREMENTS] hereto). The insurance must: (1) conform to the CITY'S requirements; (2) comply with the Insurance Contractual Requirements (Form General 146 in Exhibit 3 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. The CONTRACTOR shall comply with all Insurance Contractual Requirements shown on Exhibit 3 hereto. Exhibit 3 is hereby incorporated by reference and made a part of this CONTRACT.

13.3 BONDS Risk Manager Insurance Requirements (2023)

All bonds required by the CITY shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 et seq., as amended from time to time. CONTRACTOR will be required to submit proof of insurance and payment and performance bonds for 100% of the cost of the Work Package to the Board of Public Works. CONTRACTORS are required to submit these to the Board within 5 days of the issuance of the Work Package for approval by the City Administrative Officer's Risk Manager.

ARTICLE 14 – INDEPENDENT CONTRACTORS

The CONTRACTOR is an independent contractor and not as an agent or employee of the CITY. The CONTRACTOR shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY.

ARTICLE 15 – WARRANTIES AND RESPONSIBILITY OF CONTRACTOR

15.1 The CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within the CONTRACTOR'S profession, doing the same or similar work under the same or similar circumstances.

- 15.2 The CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the CONTRACTOR under this AGREEMENT. The CONTRACTOR shall, at no additional cost to the CITY, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, calculations, and other services.
- 15.3 The CONTRACTOR shall exhibit proper professional judgment in the use of information furnished by the CITY in Article 6 [ARTICLE 6 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY]. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, the CONTRACTOR will notify the CITY in a reasonable manner within three (3) business days after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.
- 15.4 The CONTRACTOR shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.
- 15.5 Except as specified in Article 13 [INDEMNIFICATION ARTICLE] and as otherwise provided in this AGREEMENT, the CONTRACTOR shall be and shall remain liable, in accordance with applicable law, for all damages to the CITY caused by the CONTRACTOR'S negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to the CITY, CITY-furnished data, or any third party (excepting any CONTRACTOR or SUBCONTRACTOR of any tier).

ARTICLE 16 - INTELLECTUAL PROPERTY INDEMNIFICATION

The CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the CITY, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by the CONTRACTOR, or its

SUBCONTRACTORS, in performing the work under this CONTRACT; or (2) as a result of the CITY'S actual or intended use of any Work Product (as defined in Article 18 [OWNERSHIP AND LICENSE]) furnished by the CONTRACTOR, or its SUBCONTRACTORS, under this CONTRACT. The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. This provision will survive expiration or termination of this CONTRACT.

ARTICLE 17 – INTELLECTUAL PROPERTY WARRANTY

The CONTRACTOR represents and warrants that its performance of all obligations under this CONTRACT does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity, and/or proprietary information.

ARTICLE 18 – OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this CONTRACT including, without limitation, documents, materials, data, reports, manuals, specifications, artworks, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by the CONTRACTOR or its SUBCONTRACTORS under this CONTRACT (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of the CITY for its use in any manner the CITY deems appropriate. The CONTRACTOR hereby assigns to the CITY all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this CONTRACT. The CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

The CONTRACTOR agrees that a monetary remedy for breach of this CONTRACT may be inadequate, impracticable, or difficult to prove and that a breach may cause the CITY irreparable harm. The CITY may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude the CITY from seeking or obtaining any other relief to which the CITY may be entitled.

For all Work Products delivered to the CITY that are not originated or prepared by the CONTRACTOR or its SUBCONTRACTORS under this CONTRACT, the CONTRACTOR shall secure a grant, at no cost to the CITY, for a non-exclusive perpetual license to use such Work Products for any CITY purpose(s).

The CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the CITY.

Any subcontract entered into by the CONTRACTOR relating to this CONTRACT shall include this provision to contractually bind its SUBCONTRACTORS performing work under this CONTRACT such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein.

ARTICLE 19 – SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 28 [PROHIBITION AGAINST ASSIGNMENT OR DELEGATION ARTICLE].

ARTICLE 20 – CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION

All notices shall be made in writing and may be given by personal delivery, regular mail, or electronic mail. Notices sent by regular mail should be registered or certified and sent to the designated contact person for each party and addressed as follows:

To the CITY:

Contact Person: Todd Cromwell
Address: Hyperion Water Reclamation Plant
12000 Vista Del Mar
Playa Del Rey, CA 90293
Telephone: (310) 350-9172
E-mail: todd.cromwell@lacity.org

To the CONTRACTOR:

Contact Person: Tony Moon, President

Address: 6201 1/2 Van Nuys Blvd.
#B
Van Nuys, CA 91401
Telephone: (818) 235-7762
Email tony@fareastlandscape.com

ARTICLE 21 – FORCE MAJEURE (EXCUSABLE DELAYS)

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this CONTRACT, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a SUBCONTRACTOR of the CONTRACTOR shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both the CONTRACTOR and SUBCONTRACTOR, and without any fault or negligence of either of them. In such case, the CONTRACTOR shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the SUBCONTRACTOR were obtainable from other sources in sufficient time to permit the CONTRACTOR to perform timely. As used in this CONTRACT, the term "SUBCONTRACTOR" means a subcontractor at any tier.

In the event the CONTRACTOR'S delay or failure to perform arises out of a Force Majeure Event, the CONTRACTOR agrees to use commercially reasonable best efforts to

obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

ARTICLE 22 – SEVERABILITY

Should any portion of this AGREEMENT be determined to be void or unenforceable, such shall be severed from the whole and the AGREEMENT will continue as modified.

ARTICLE 23 – DISPUTES

Should a dispute or controversy arise concerning provisions of this AGREEMENT or the performance of work hereunder, the parties may elect to submit such to a court of competent jurisdiction.

ARTICLE 24 – ENTIRE AGREEMENT

This AGREEMENT contains all of the agreements, representations, and understandings of the parties hereto and supersedes and/or incorporates any previous understandings, proposals, commitments, or agreements, whether oral or written, and may be modified or amended only as herein provided.

ARTICLE 25 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY, including but not limited to, laws regarding health and safety, labor and employment, wage and hours, and licensing. This CONTRACT and its performance shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. The CONTRACTOR shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this CONTRACT with no additional compensation paid to the CONTRACTOR.

In any action arising out of this CONTRACT, the CONTRACTOR consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term, or provision of this CONTRACT is held void, illegal, unenforceable, or

in conflict with any federal, state, or local law or regulation having jurisdiction over this AGREEMENT, the validity of the remaining parts, terms, or provisions of this CONTRACT shall not be affected thereby.

ARTICLE 26 – CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION

CERTIFICATE REQUIRED

For the duration of this CONTRACT, the CONTRACTOR shall maintain valid Business Tax Registration Certificate(s) as required by the CITY'S Business Tax Ordinance, Section 21.1 et seq. of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

Should any such certificate(s) become suspended or revoked, it is the CONTRACTOR'S responsibility to report the matter immediately to the CITY PROJECT MANAGER.

ARTICLE 27 – WAIVER

A waiver of a default of any part, term, or provision of this CONTRACT shall not be construed as a waiver of any succeeding default or as a waiver of the part, term, or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

ARTICLE 28 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

The CONTRACTOR may not, unless it has first obtained the written permission of the CITY:

- A. Assign or otherwise alienate any of its rights under this CONTRACT, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this CONTRACT.

ARTICLE 29 – PERMITS

The CONTRACTOR and its directors, officers, partners, agents, employees, and SUBCONTRACTORS, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications, and other documents necessary for the CONTRACTOR'S performance of this CONTRACT and shall pay any fees required therefore. The CONTRACTOR certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to the CONTRACTOR'S performance of this CONTRACT.

ARTICLE 30 — BEST TERMS

Throughout the term of this CONTRACT, the CONTRACTOR shall offer the CITY the best terms, prices, and discounts that are offered to any of the CONTRACTOR'S customers for similar goods and services provided under this CONTRACT.

ARTICLE 31 — CLAIMS FOR LABOR AND MATERIALS

The CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this CONTRACT so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produced by the CONTRACTOR hereunder) and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this CONTRACT.

ARTICLE 32 — BREACH

Except for Force Majeure, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

ARTICLE 33 — MANDATORY PROVISIONS PERTAINING TO NON-DISCRIMINATION IN EMPLOYMENT

Unless otherwise exempt, this CONTRACT is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. The CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this CONTRACT, the CONTRACTOR shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status, or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this CONTRACT by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this CONTRACT by reference and will be known as the "Equal Employment Practices" provisions of this CONTRACT.

- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this CONTRACT by reference and will be known as the "Affirmative Action Program" provisions of this CONTRACT.

Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 34 — CHILD SUPPORT OBLIGATIONS ASSIGNMENT ORDERS

The CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, the CONTRACTOR shall fully comply with all applicable State and Federal employment reporting requirements. Failure of the CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of the CONTRACTOR to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this CONTRACT. Failure of the CONTRACTOR or principal owner to cure the default within ninety (90) days of the notice of default will subject this CONTRACT to termination for breach. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 35 – LIVING WAGE AND SERVICE CONTRACTOR WORKER— RETENTION ORDINANCES

35.1 LIVING WAGE ORDINANCE

The CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 et seq., as amended from time to time. The CONTRACTOR further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision. (Exhibit 5)
[DECLARATION OF COMPLIANCE WITH LIVING WAGE ORDINANCE EXHIBIT 1]

35.2 SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

The CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 36 – ACCESS AND ACCOMMODATIONS

The CONTRACTOR represents and certifies that:

- A. The CONTRACTOR shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 et seq., the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 et seq., the Fair Housing Act, and its implementing regulations and any subsequent amendments, and the California Government Code Section 11135;
- B. The CONTRACTOR shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. The CONTRACTOR shall provide reasonable accommodation upon request to ensure equal access to CITY-funded programs, services, and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this CONTRACT are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

The CONTRACTOR understands that the CITY is relying upon these certifications and representations as a condition to funding this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE

The CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 et seq., as amended from time to time.

ARTICLE 38 – LOS ANGELES BUSINESS INCLUSION PROGRAM

Unless otherwise exempted prior to bid submission, the CONTRACTOR shall comply with all aspects of the Business Inclusion Program as described in the [Request for Qualifications (RFQ)], throughout the duration of this CONTRACT. The CONTRACTOR

shall utilize the Regional Alliance Marketplace for Procurement (RAMP) at <https://www.rampla.org/s/> to perform and document outreach to Minority, Women, and Other Business Enterprises. The CONTRACTOR shall perform subcontractor outreach activities through RAMP. The CONTRACTOR shall not change any of its designated SUBCONTRACTORS or pledged specific items of work to be performed by these SUBCONTRACTORS, nor shall the CONTRACTOR reduce their level of effort, without prior written approval of the CITY.

ARTICLE 39 — DISCLOSURE ORDINANCES

Unless otherwise exempt in accordance with the provisions of this Ordinance, this CONTRACT is subject to the Slavery Disclosure Ordinance, Section 10.41 et seq., of the Los Angeles Administrative Code, as may be amended from time to time. The CONTRACTOR certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision. Exhibit 4 [SLAVERY DISCLOSURE ORDINANCE EXHIBIT] is attached hereto and incorporated herein by this reference.

The CONTRACTOR shall comply with Los Angeles Administrative Code Section 10.50 et seq., 'Disclosure of Border Wall Contracting.' The City or the Department of Public Works (DPW) may terminate this CONTRACT at any time if the City or DPW determines that the CONTRACTOR failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

ARTICLE 40 — CONTRACTOR PERFORMANCE EVALUATION ORDINANCE

At the end of this AGREEMENT, the CITY will conduct an evaluation of the CONTRACTOR'S performance. The CITY may also conduct evaluations of the CONTRACTOR'S performance during the term of the AGREEMENT. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the CONTRACTOR assigns to the AGREEMENT. A contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed fourteen (14) CALENDAR DAYS to respond. The CITY will use the final CITY evaluation, and any response from the CONTRACTOR, to evaluate proposals and to conduct reference checks when awarding other service contracts.

ARTICLE 41 – MUNICIPAL LOBBYING ORDINANCE

The CONTRACTOR for the CITY shall submit a certification, on a form prescribed by the City Ethics Commission, that the CONTRACTOR acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance, Exhibit 11 [MUNICIPAL LOBBYING ORDINANCE], if the CONTRACTOR qualifies as a lobbying entity under the Ordinance. The exemptions contained in Los Angeles Administrative Code Section 10.40.4 shall not apply to this subsection.

ARTICLE 42 – FIRST SOURCE HIRING ORDINANCE

The CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 43 – COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12) FOR MEASURE H/CONTRACTOR CONTRIBUTIONS/FUNDRAISING

Unless otherwise exempt, if this CONTRACT is valued at \$100,000 or more and requires approval by an elected CITY office, the CONTRACTOR, CONTRACTOR'S principals, and the CONTRACTOR'S SUBCONTRACTORS expected to receive at least \$100,000 for performance under this CONTRACT, and the principals of those SUBCONTRACTORS (the "Restricted Persons") shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles the CITY to terminate this CONTRACT and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected CITY officials or candidates for elected CITY office for twelve months after this CONTRACT is signed. Additionally, a CONTRACTOR subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any CONTRACTOR subject to Charter Section 470(c)(12) shall include the following notice in any contract with any SUBCONTRACTOR expected to receive at least \$100,000 for performance under this CONTRACT:

"Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # _____

. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles ("CITY") officials and candidates for elected CITY office for twelve months after the CITY Contract is signed. You are required to provide the names and contact information of your principals to the CONTRACTOR and to amend that information within ten business days if it changes during the twelve-month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

ARTICLE 44 — COMPLIANCE WITH THE IRAN CONTRACTING ACT OF 2010

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with the CITY for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit." (Exhibit XX)

ARTICLE 45 — INTEGRATED CONTRACT

This CONTRACT sets forth all of the rights and duties of the parties with respect to the subject matter of this CONTRACT and replaces any and all previous contracts or understandings, whether written or oral, relating thereto. This CONTRACT may be amended only as provided for in the provisions of Article 12 [AMENDMENTS, CHANGES, OR MODIFICATIONS] hereof.

ARTICLE 46 — DATA PROTECTION

- A. The CONTRACTOR shall protect, using the most secure means and technology that is commercially available, CITY-provided data or consumer-provided data acquired in the course and scope of this CONTRACT, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). The CONTRACTOR shall notify the CITY in writing as soon as reasonably feasible, and in any event within twenty-four (24) hours, of the CONTRACTOR'S discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. The CONTRACTOR shall begin remediation immediately. The CONTRACTOR shall provide

daily updates, or more frequently if required by the CITY, regarding findings and actions performed by the CONTRACTOR until the Data Breach or Security Incident has been effectively resolved to the CITY'S satisfaction. The CONTRACTOR shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with the CITY. At the CITY'S sole discretion, the CITY and its authorized agents shall have the right to lead or participate in the investigation. The CONTRACTOR shall cooperate fully with the CITY, its agents, and law enforcement.

- B. If the CITY is subject to liability for any Data Breach or Security Incident, then the CONTRACTOR shall fully indemnify and hold harmless the CITY and defend against any resulting actions.

ARTICLE 47 – LOCAL BUSINESS PREFERENCE ORDINANCE

The CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 48 – CITY CONTRACTOR'S USE OF CRIMINAL HISTORY FOR CONSIDERATION OF EMPLOYMENT APPLICATIONS

The CONTRACTOR shall comply with the City Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

ARTICLE 49 – COMPLIANCE WITH IDENTITY THEFT LAWS AND PAYMENT CARD DATA SECURITY STANDARDS

The CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to customers. The CONTRACTOR also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program, or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, the CONTRACTOR shall verify proper truncation of receipts in compliance with FACTA.

**ARTICLE 50 – COMPLIANCE WITH CALIFORNIA PUBLIC RESOURCES CODE
SECTION 5164**

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor if the person has been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, the CONTRACTOR shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by the CITY. The CONTRACTOR is required to have all employees, volunteers, and SUBCONTRACTORS (including all employees and volunteers of any SUBCONTRACTOR) of the CONTRACTOR working on the premises to pass a fingerprint and background check through the California Department of Justice at the CONTRACTOR'S sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

ARTICLE 51 – POSSESSORY INTERESTS TAX

Rights granted to the CONTRACTOR by the CITY may create a possessory interest. The CONTRACTOR agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, the CONTRACTOR shall pay the property tax. The CONTRACTOR acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

ARTICLE 52 – CONFIDENTIALITY

All documents, information, City Data (as that term is defined in Article 46) and materials provided to the CONTRACTOR by the CITY or developed by the CONTRACTOR pursuant to this CONTRACT (collectively "Confidential Information") are confidential. The CONTRACTOR shall not provide, and shall prohibit its employees and subcontractors from providing or disclosing, or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by the CITY or as required by law. The CONTRACTOR shall immediately notify the CITY of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this CONTRACT.

ARTICLE 53 – COUNTERPARTS

This AGREEMENT may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by the CITY) and sent by email shall be deemed original signatures.

ARTICLE 54 – CONTRACTOR DATA REPORTING

If CONTRACTOR is a for-profit, privately owned business, CONTRACTOR shall, within 30 days of the effective date of the CONTRACT and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the CONTRACT), report the following information to CITY via the Regional Alliance Marketplace for Procurement ("RAMP") or via another method specified by CITY: Contractor's and any Subcontractor's annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner ("Contractor/Subcontractor Information"). CONTRACTOR shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by CITY.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year written below.

CITY OF LOS ANGELES

By: _____

FAR-EAST LANDSCAPE AND
MAINTENANCE, INC.

By: Tony Moon

Title: Commissioner, Board of Public Works
Date: _____

Title: Owner/President
Date: _____

By: _____

Title: Commissioner, Board of Public Works

Date: _____

APPROVED AS TO FORM:

HYDEE FELDSTEIN SOTO, City Attorney

By: _____
Virginia Choi

Title: Deputy City Attorney

Date: _____

ATTEST:

PETTY F. SANTOS, Interim City Clerk

By: _____

Title: Deputy City Clerk

Date: _____