

AGREEMENT NO.
AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
WET

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board") and WET, a California corporation, 10847 Sherman Way, Sun Valley, California 91352 ("Consultant").

WHEREAS, City requires specialized equipment/mechanical maintenance and repair services for the Gateway and Interactive Fountains and Reflective Pool ("Water Features") along Harbor Boulevard in San Pedro, California; and

WHEREAS, the software and hardware, including lighting and sound systems, are proprietary to WET, the original designer and manufacturer of the Water Features; and

WHEREAS, City requires the professional, expert, and technical services of Consultant on a temporary and/or occasional basis to assist City in performing maintenance and repair on the Water Features; and

WHEREAS, Consultant possesses extensive experience in dealing with the maintenance and repair of the Water Features; and

WHEREAS, Consultant, by virtue of training and experience, is well qualified to provide such services to City; and

WHEREAS, City does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to City, as an independent contractor, certain professional, technical, and expert services of a temporary and occasional character as set forth in Exhibit A ("Scope of Work").

B. Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

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C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon Executive Director's written request, Consultant shall supply City's Harbor Department ("Department") with all agreements between it and its Subconsultants.

2. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Consultant, upon its request, all documents and papers in possession of City which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article 10 (Termination) hereof.

C. Consultant shall provide Executive Director with reasonable advance written notice if it requires access to premises of Water Features or the Department. Subsequent access rights, if any, shall be granted to Consultant at the sole reasonable discretion of Executive Director, specifying conditions Consultant must satisfy in connection with such access. Consultant acknowledges that such areas may be occupied or used by tenants or contractors of City and that access rights granted by Department to Consultant shall be consistent with any such occupancy or use. Any failure to perform the services by Consultant arising from lack of access (despite providing reasonable advance written notice) to requested premises shall be excused.

3. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board ("Effective Date"). Consultant is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement.

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Accordingly, in no event shall this Agreement become effective until after the expiration of the fifth Council meeting day after Board action, or the date of City Council's approval of the Agreement.

B. This Agreement shall have an initial term of one (1) year unless earlier terminated according to the provisions herein.

C. City shall have the option to extend the term of this Agreement for two (2) consecutive renewal periods of one (1) year each, for a total Agreement term not to exceed three (3) years from the Effective Date. Exercise of the option to renew shall be by written notice from the Executive Director delivered to Consultant not later than ninety (90)-days prior to the expiration of the current term of the Agreement.

D. The decision to exercise or not exercise any one-year option shall be within the sole and absolute discretion of the Executive Director. Should the Executive Director elect to exercise the option, Consultant shall be bound by the same terms and conditions contained in this Agreement unless a modification is mutually agreed to by the Parties.

4. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

A. This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

B. The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

C. City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

D. Although Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

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E. If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

5. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, City shall pay and reimburse Consultant at the rates set forth in Exhibit B.

B. The maximum payable under this Agreement, including any options to extend under Section 3, paragraph B, including reimbursable expenses (see Exhibit B), shall be One Million Two Hundred Eighty-Two Thousand Dollars (\$1,282,000).

C. Consultant shall submit invoices in quadruplicate to City monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by Consultant and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. _____ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance.

(Consultant's Signature)

Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article 8 of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, audited, and paid.

Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. City may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

Further, where Consultant employs Subconsultants under this Agreement, Consultant shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit C) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without

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a completed Monthly Subconsultant Monitoring Report Form. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

D. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section
Harbor Department, City of Los Angeles
P.O. Box 191
San Pedro, CA 90733-0191

6. RECORDKEEPING AND AUDIT RIGHTS

A. Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to City. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide City at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Article 6 shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

7. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. Consultant shall not represent itself as an agent or employee of City and shall have no power to bind City in contract or otherwise.

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8. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department. See <https://finance.lacity.org/how-register-btrc>.

9. INSURANCE

A. Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

(1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Where Consultant provides or dispenses alcoholic beverages, Host Liquor Liability coverage shall be provided as above. Where Consultant provides pyrotechnics, Pyrotechnics Liability shall be provided as above. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name City of Los Angeles Harbor Department, its officers, agents, and employees as Primary additional insureds.

Where Consultant's operations involve work within 50 feet of railroad track, Consultant's Commercial General Liability coverage shall have the railroad exclusion deleted.

(2) Automobile Liability Insurance

Automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance

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Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

(3) Workers' Compensation and Employer's Liability

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

B. Insurance Procured by Consultant on Behalf of City

Where Consultant is required to name the City of Los Angeles Harbor Department, its officers, agents, and employees as Primary additional insureds on any insurance policy required by this Agreement, Consultant shall cause City to be named as an additional insured on all policies it procures in connection with this Article 9. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that City, Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. ____, and under any amendments, modifications, extensions or renewals of said Agreement regardless of where such contractual obligations, operations, uses, occupations, acts and activities occur.

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"The policy to which this endorsement is attached shall provide a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons to the Risk Manager.

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess coverage;

"In the event of one of the named insured's incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

C. Required Features of Coverages

Insurance procured by Consultant in connection with this Article 9 shall include the following features:

(1) Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Consultant's insurance documents. Consultant's insurance broker or agent shall register with the City's online insurance compliance system **KwikComply** at <https://kwikcomply.org/> and submit the appropriate proof of insurance on Consultant's behalf.

Upon request by City, Consultant shall furnish a copy of the binder of insurance and/or a full certified policy for any insurance policy required herein. This obligation is intended to, and shall, survive the expiration or earlier termination of this Agreement.

(2) Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

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(3) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to the City of Los Angeles Harbor Department, Attn: Risk Manager and the City Attorney's Office, 425 S. Palos Verdes Street, San Pedro, California 90731.

(4) Modification of Coverage

Executive Director, at his or her sole reasonable discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

(5) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Consultant shall renew or extend such policy in accordance with the requirements of this Agreement and direct their insurance broker or agent to submit to the City's online insurance compliance system **KwikComply** at <https://kwikcomply.org/> a renewal endorsement or renewal certificate or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance shall be deducted from the next payment due Consultant.

(6) Limits of Coverage

If Consultant maintains higher limits than the minimums required by this Agreement, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

D. Right to Self-Insure

Upon written approval by the Executive Director, Consultant may self-insure if the following conditions are met:

- (1) Consultant has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Consultant must have a formal resolution of its board of directors authorizing self-insurance.



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- (2) Consultant agrees to protect the City, its boards, officers, agents, and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
- (3) Consultant agrees to defend the City, its boards, officers, agents, and employees in any lawsuit that would otherwise be defended by an insurance carrier.
- (4) Consultant agrees that any insurance carried by Department is excess of Consultant's self-insurance and will not contribute to it.
- (5) Consultant provides the name and address of its claims administrator.
- (6) Consultant submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
- (7) Consultant agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
- (8) Consultant has complied with all laws pertaining to self-insurance.

E. Accident Reports

Consultant shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

10. TERMINATION PROVISION

The Board, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving Consultant ten (10) business days' advance, written notice of the Board's election to cancel and terminate this Agreement, provided that Consultant shall be entitled to all compensation accrued for services up to and including the date of any such termination. It is agreed that any Agreement entered

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into shall not limit the right of City to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

11. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the interests of the Department.

B. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article 1. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on City to such Subconsultant(s) or give the Subconsultant(s) any rights against City.


12. AFFIRMATIVE ACTION

Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit D.

13. SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

A. It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit E.

B. It is also the policy of the Department to support an increase in local and regional jobs. The Department's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and


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regional private sector. Consultant shall assist City in implementing this policy and shall use its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities present themselves.

NOTE: Prior to being awarded a contract with City, Consultant and all Subconsultants must be registered on the City's Contracts Management and Opportunities Database, Regional Alliance Marketplace for Procurement (RAMP), at <http://www.RAMPLA.org>.

14. CONFLICT OF INTEREST

A. It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

B. During the term of this Agreement, Consultant shall inform the Department in writing when Consultant, or any of its Subconsultants, employs or hires in any capacity, and for any length of time, a person who has worked for the Department as a Commissioner, officer, or employee. Said notice shall include the individual's name and current position and their prior position and years of employment with the Department. Written notice shall be provided by Consultant to the Department within thirty (30) days of the employment or hiring of the individual.

15. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

16. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.



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17. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify City and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by Consultant in the performance of this Agreement, so long as such materials are not improperly (i.e., used contrary for their purpose, used in breach of this Agreement, used in breach of any written instruction by Consultant) used by City.

18. PROPRIETARY INFORMATION

A. Consultant shall retain the exclusive ownership of any and all intellectual property, including patent, copyright, trademark, and trade secret rights, in all plans, equipment, computer programs, choreographies, and other materials produced or used by Consultant under this Agreement ("Confidential or Proprietary Information"). City agrees not to use any documents produced by Consultant hereunder for any other projects without Consultant's prior written consent. City agrees to diligently protect all information which Consultant designates as trade secret information that Consultant may disclose to City or Board in Connection with this Agreement. Examples of Consultant's trade secrets include designs, specifications, methods, concepts, technologies, plans, drawings, models, choreographic animation programs and other tangible or intangible works used in the Water Features or otherwise disclosed to City by Consultant. All designs, artistic works, and other original works of authorship created by Consultant in connection with the Water Features shall be protected to the maximum extent permitted by international and United States copyright laws. Preparation of works of authorship under this Agreement does not constitute a work for hire under the copyright laws of the United States, and Consultant retains the exclusive ownership of the copyright interest in such works and retains all rights to prepare derivative works.

B. Consultant hereby grants to City a non-exclusive license to any patent owned by Consultant for any invention used in connection with the Water Features pursuant to this Agreement upon final payment of all monies due to Consultant under this Agreement, including any change orders (if any). The patent license permits the repair but not the replacement of any patented device. The patent license will be transferable only in connection with a transfer of all ownership rights in the Water Features. Any technology developed for or in relation to work pursuant to this Agreement, whether patentable or not, whether new or derivative of existing patents or other technology, belongs solely to Consultant. Upon City's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to City. It is expressly understood and agreed that, as between City and Consultant, the referenced license shall arise for City's benefit immediately upon the production of the work product, and not dependent on the written license specified above. City may transfer any such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

A handwritten signature in blue ink, appearing to read 'M. P. S.', with the date '10/12/23' written below it.

C. City grants to Consultant the right to use photographs and other materials developed or used in connection with the Water Features in Consultant's promotional, advertising and marketing activities.

19. CONFIDENTIALITY

A. The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

B. City may gain access to and acquire knowledge related to Consultant's Confidential or Proprietary Information. City agrees that any such knowledge acquired through its association with Consultant is confidential and that a confidential relationship exists between the parties. City agrees that Confidential or Proprietary Information will constitute a trade secret and that title to and ownership of all patent, copyright, trade secret and other proprietary rights in all Confidential or Proprietary Information and in all materials using, incorporating or derived from Confidential or Proprietary Information will be and remain Consultant's exclusive property. City will not disclose Confidential or Proprietary Information to any third party without Consultant's prior written consent. City will not use, or permit others to use, Confidential or Proprietary Information for any purpose other than that contemplated by any written agreement between the parties. City will take all reasonable measures to avoid disclosure, dissemination, or unauthorized use of Confidential or Proprietary Information.

C. Consultant shall defend, indemnify and hold harmless City, its officers, employees and agents and the Board (collectively Indemnitees) from any claim, action, or proceeding against the Indemnitees arising from or related to the Confidential or Proprietary Information including without limitation any claim, action or proceeding brought to require disclosure of any Confidential or Proprietary Information under the California Public Records Act, the Freedom of Information Act or any other law or legal theory. The Indemnitees shall promptly notify Consultant of any such claim, action or proceeding and the Indemnitees shall cooperate fully in the defense. Upon demand, Consultant shall promptly reimburse the Indemnitees for any court fees and reasonable attorney's fees which the Indemnitees may incur as a result of any such claim, action or proceeding.


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20. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Director of Construction and Maintenance, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Consultant shall be addressed to it at the address set forth above with an email copy to CEO, Mark W. Fuller at mark.fuller@wetdesign.com. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

21. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Consultant declares that it has an authorized TIN which shall be provided to the Department prior to payment under this Agreement. No payments will be made under this Agreement without a valid TIN.

22. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution Nos. 19-8419 and 19-8420 on January 24, 2019, adopting the provisions of Los Angeles City Ordinance No. 185356 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Consultant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

23. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

A. Consultant and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for Consultant and/or Subconsultant's employees.

B. Consultant and/or Subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. Consultant and/or Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of

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Assignments in accordance with Cal. Family Code Sections 5230 et seq. Consultant or Subconsultant will maintain such compliance throughout the term of this Agreement.

24. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Consultant shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Consultant and pursue any and all other legal remedies that may be available. See Exhibit F.

25. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

Consultant, Subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Consultant is required to provide and update certain information to City as specified by law. Any Consultant subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. _____. Pursuant to City Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subconsultant is required to provide to Consultant names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. Subconsultant's information must be provided to Consultant within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

Consultant, Subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

Handwritten signature in blue ink, followed by the date "10-12-23" written below it.

26. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Consultant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

27. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

28. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

29. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as

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though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

30. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

31. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

32. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

33. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

34. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

35. LIMITATION OF DAMAGES

EXCEPT FOR BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SERVICE OR THIS AGREEMENT AND REGARDLESS OF WHETHER OR NOT THE PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF

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SUCH DAMAGES. FURTHER, IN NO EVENT WILL THE TOTAL LIABILITY OF EITHER PARTY TO THE OTHER EXCEED THE TOTAL VALUE OF THIS AGREEMENT FOR THE PRECEDING 12 MONTHS. THE FOREGOING WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

(Signature page follows)



Handwritten signature and date: 10-12-23

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.


THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners


Dated: _____, 20__

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

Dated: October 13, 2023

WET
By: 
MARK FULLER, CEO
(Print/type name and title)

Attest: 
Vernon Bui
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

October 25, 2023
HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel

By: 
Janet Karkanen, Deputy

JLK:ila (09/13/2023)
Attachments

Account #	<u>54020</u>	W.O. #	<u>3416600</u>
Ctr/Div #	<u>0510</u>	Job Fac. #	<u>2671100</u>
Proj/Prog #	<u>000</u>		
Budget FY:		Amount:	
	<u>23/24</u>	\$	<u>348,853</u>
	<u>24/25</u>	\$	<u>425,601</u>
	<u>25/26</u>	\$	<u>434,113</u>
	<u>26/27</u>	\$	<u>72,590</u>
	TOTAL	\$	1,281,157

For Acct/Budget Div. Use Only:

Verified by: _____

Verified Funds Available: _____

Date Approved: _____

Rev. 12/21/22


10-12-23

Date: 10/23/2023

Contractor/Vendor Name: WET Enterprises, Inc.

Account#	54020	W.O. #	Various
Ctr/Div#	0510	Job Fac.#	Various
Proj/Prog#	000		
	Budget FY:	Amount:	
	2023-24	\$348,853	
	2024-25	\$425,601	
	2025-26	\$434,113	
	2026-27	\$72,590	
	TOTAL:	\$1,281,157	

For Acct/Budget Div. Use Only

Verified by: Erin O'Malley Digitally signed by Erin O'Malley
Date: 2023.10.24 11:26:28 -07'00'

Verified Funds Available: *Frank* Digitally signed by Frank Liu
Date: 2023.10.24 13:08:27 -07'00'

Date Approved: 10/24/23

Exhibit A – Scope of Work

SCOPE OF SERVICES

This Agreement is for a one (1) year with two one-year renewal options maintenance program for the San Pedro Waterfront Gateway water features' equipment. Itemized list of the equipment to be maintained is found on page 4 under EQUIPMENT TO BE MAINTAINED. The Scope of Services includes parts and labor, regularly scheduled service visits, equipment repair/adjustments, preventative maintenance, and any unscheduled visits as required. Contractor will provide prior notification of all scheduled and unscheduled visit to the Harbor Department designee.

Specifically, under this Agreement, contractor will:

- 1 Provide weekly on-site maintenance service visits, as required, to keep the water features operating in show quality condition, with all characteristics of the two main fountains (Gateway Fountains) and the interactive fountain working at optimal levels of performance, with no appreciable downtime. Show quality condition is defined as the consistent performance of the main two fountains and the interactive fountain with music, lights, water streams, and operability of all features' Equipment, in synchronization in the manner for which it was created. This performance must be reliably available to meet the show schedule as posted on the Port of Los Angeles website (www.portoflosangeles.org/recreation/fountain.asp). The standard of performance is one where a reasonable person can visually tell whether there is a malfunction of Equipment. Note: The songs played during fountain performances are not part of this Agreement.
- 2 Work to resolve whatever led to the problem. Contractor will be notified by Harbor Department staff of all scheduled special events (see link above in section 1).
- 3 Anticipate and plan for three (3) scheduled visits per week, along with any unscheduled visits necessary to maintain show quality condition throughout the agreement period. The water features are further defined in three Operations and Maintenance Manuals, one entitled "San Pedro Gateway Monument Water Feature" dated September 18, 2008, another entitled "San Pedro Harbor Blvd/2nd Street Water Feature" dated October 9, 2008, and a third volume entitled "San Pedro Gateway Monument Feature Operational and Maintenance Manual Electrical Drawings." These are incorporated by reference into the final agreement. The water features represent constructed improvements that have been installed at the Harbor Boulevard Parkway, excluding infrastructure provided by the Los Angeles Harbor Department (LAHD), i.e. the basin, utility connections, and waterproofing.
- 4 Work with Harbor Department staff on a shared responsibility basis to respond to intrusion alarms and the need to perform resets for relevant aspects of the water features. In the event of an intrusion, contractor will respond and resolve whatever led to the problem. City will respond on weekdays, and contractor will respond on weekends and holidays between 8:00AM and 9:00PM. City Holidays are:
 - New Year's Day (January 1)
 - Martin Luther King Jr. Day (Third Monday in January)

- Presidents' Day (Third Monday in February)
- Cesar Chavez Day (Last Monday in March)
- Memorial Day (Last Monday in May)
- Juneteeth (June 19)
- Independence Day (July 4)
- Labor Day (First Monday in September)
- Indigenous Peoples' Day (Second Monday in October)
- Veterans' Day (November 11)
- Thanksgiving Day (Fourth Thursday of November)
- Friday after Thanksgiving Day (Fourth Friday of November)
- Christmas Day (December 25)

When any holiday falls on a Saturday, it will be observed on the preceding Friday. When any holiday falls on a Sunday, it will be observed on the following Monday.

- 5 Maintain, as required, an adequate inventory of parts on City premises, within ¼ mile of the features, accessible to contractor only, to ensure cost effective and continuous operation of the water feature. The Harbor Department is providing space in a storage container.
- 6 Notify Harbor Department staff of times the features will be shut down for performance of unscheduled maintenance upon 72-hour notice to the Director of Construction and Maintenance or designee, and with the Director's concurrence.
- 7 Furnish all consumables (such as lamps and valve rebuild kits) during scheduled site visits. Cost of consumables is within the compensation amount included in Exhibit B – Compensation Rates, excluding damage due to vandalism, natural disasters, or insurable causes.
- 8 Repair, modify or replace if not repairable, any malfunctioning elements of the water features' Equipment that were furnished by contractor, excluding damage due to vandalism, natural disasters, or insurable causes.
- 9 Provide recommendations, as appropriate, for modifications to the existing systems in order to reduce operating costs or enhance overall appearance of the water features.
- 10 Provide on-site, informal training to Harbor Department maintenance and operations staff of the water features, such as feature reset, startup and shutdown, and safety features, upon request of the Harbor Department. Such training will be requested as operational needs arise. Cost of training is included in the annual costs in Exhibit B – Compensation Rates.
- 11 Provide any necessary passwords or codes to Harbor Department staff for testing and verification of equipment by Harbor Department staff.

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10-12/23*

- 12 Comply with all non-permitted confined space entry standards per California Occupational Safety and Health Administration (Cal/OSHA) Rules including T8 CCR §5157: Permit Required Confined Space and T8 CRR §5158: Other Confined Space Operations.
- 13 Notify Harbor Department, in writing, of any problems observed with the water features' Equipment or operating systems. If these are due to handling or interactions by Harbor Department staff or guests, contractor will advise Harbor Department so that corrective actions can be taken.

To be most effective in performing the maintenance process as outlined above, Harbor Department agree to the following:

- 14 Ensure that the San Pedro Waterfront Gateway maintenance staff perform routine custodial tasks such as surface skimming, basin debris removal, adding bromine and cleaning basket strainers.
- 15 Report to contractor, in writing, any instance of malfunctioning Equipment as soon as Harbor Department staff become aware of it.
- 16 Ensure that guests do not interact with the water features in a way that inhibits operation or that presents a danger to themselves or others.
- 17 Ensure that the operation and maintenance staff members at San Pedro Waterfront Gateway, Second Street and the Reflection Pool do not interact with the water features in a manner not approved by contractor.
- 18 Provide labor to assist and support contractor technical staff during certain operations, on an as-needed basis where one person will be unable to safely accomplish the work.
- 19 Provide contractor with access to and use of any information and facilities that contractor determine is necessary to provide the Scope of Services.
- 20 Provide secure and accessible storage area(s) for parts, Equipment, and other items used to maintain the features.
- 21 Maintain the Project and site conditions in accordance with the Contractor Operation and Maintenance Manual.
- 22 Provide internet connection to the pump room for remote diagnostic capability.
- 23 Harbor Department agree not to modify, or permit anyone other than contractor to modify, the Project by way of reprogramming, deleting, adding to or changing software, and Harbor Department agree to wholly indemnify contractor from any and all damages, costs, fees, etc. arising from any such modification. Harbor Department acknowledge that this post-sale restriction is reasonable to maintain the Project in a safe and reliable operating condition, to protect Harbor Department personnel and visitors from the results of improper operation, and to protect contractor against product liability claims.

EQUIPMENT TO BE MAINTAINED

Gateway Fountains

Module 1- Gateway Fountains Equipment/Mechanical Maintenance

Equipment/Mechanical and software and items requiring maintenance consist of the following items.

- FanOarsman® assemblies - 18
- MiniShooter® assemblies - 40
- SuperLight™ assemblies, with stands - 120
- Submersible junction boxes (medium) - 158
- Submersible junction boxes (large) - 2
- PicoLight™ assemblies, white, with stands - 288
- ZeptoLight™ assemblies, white, with stands - 350
- Air pressure control module - 4
- Torpedo strainers - 3
- Pumps (7.5 HP) - 4
- Pressure/Vacuum switches - 14
- Pressure gauges - 30
- Water level sensors - 4
- Wind sensors - 2
- Animation and control systems - 2
- Lighting panels - 7
- Motor control centers - 6
- Remote programming unit - 1
- Audio system speakers - 52
- Intrusion system - 1
- Paver support - 332

Interactive Fountain

Module 2- Interactive Fountain Equipment/Mechanical Maintenance

Equipment/Mechanical and software and items requiring maintenance consist of the following items.

- MicroShooter® assemblies - 12
- Submersible junction boxes - 7
- PicoLight™ assemblies, white, with stands - 24
- Water circulation filters - 1
- Animation and monitoring control systems - 1
- Light contactor - 1
- GFCI breaker - 1
- Wind sensors - 2
- Water level sensors - 2
- Paver support - 24

Reflection Pool

Module 3- Reflection Pool Equipment

Although there is no proprietary equipment in the Reflection Pool, contractor will service the feature, including:

- Water level sensors
- Water make-up valve
- Pump
- Sand filter
- Control panel

Exhibit B – Compensation Rates and Fees

COMPENSATION RATES AND FEES

All direct expenses, including all parts and materials, traveling and subsistence expenses for contractor staff traveling to the features, are included in the prices below.

Gateway Fountains

Module 1- Gateway Fountains Equipment/Mechanical Maintenance

The annual fee for the Scope of Services Module 1 shall be \$377,113, and this fee will be paid in monthly installments at the rate of \$31,426 per month.

Module 2- Interactive Fountain Equipment/Mechanical Maintenance

The annual fee for the Scope of Services Module 2 shall be \$29,082, and this fee will be paid in monthly installments at the rate of \$2,423.50 per month.

Module 3- Reflection Pool Equipment/Mechanical Maintenance

The annual fee for the Scope of Services Module 3 shall be \$12,429, and this fee will be paid in monthly installments at the rate of \$1,035.75 per month.

EXHIBIT B

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10-12-23

MONTHLY SUBCONSULTANT MONITORING REPORT

Instructions: Please indicate the SBE/VSBE/MBE/OBE/DBE participation levels achieved for the month of _____ covered by the referenced contract number.

Contract No. _____ Division _____ Contractor Administrator _____

Contractor _____ *Group _____ Contract Title/Project _____

Contract Amount _____ Start Date _____ End Date _____

Total Amount Invoiced to Date _____

SBE Mandated Participation Percentage _____ SBE _____ VSBE _____

Proposed Subcontractor Percentage _____ MBE _____ WBE _____ OBE _____ DVBE _____

	Name of Subcontractor	Type of Work Performed	Group SBE/VSBE/MBE/WBE/OBE/DVBE	PROPOSED			ACTUALS		
				Original Proposed Amount	Original Proposed Percentage	Amount Paid to Date	Amount Paid to Date Percentage	Contract Amount Percentage	
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									

Directions:

Original Proposed Percentage: Original Proposed Percentage of Total Contract Amount
 Amount Paid to Date Percentage: Percentage of Total Amount Invoiced to Date
 Contract Amount Percentage: Percentage Paid to Date of Total Contract Amount

* Group = (SBE/VSBE/MBE/WBE/OBE/DVBE)

EXHIBIT C

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 10-12-23

EXHIBIT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction and construction Contract with, or on behalf of, the City of Los Angeles for which the consideration is \$25,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such Contract:

A. During the performance of a City Contract, the Contractor certifies and represents that the Contractor and each Subcontractor hereunder will adhere to an Affirmative Action Program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

1. This section applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. The Contractor shall post a copy of Paragraph A., hereof, in conspicuous places at its place of business available to employees and applicants for employment.

B. The Contractor shall, in all solicitations or advertisements for employees placed, by or on behalf of, the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

C. At the request of the Awarding Authority or the DAA, the Contractor shall certify on an electronic or hard copy form to be supplied, that the Contractor has not discriminated in the performance of City Contracts against any employee or applicant for employment on the basis or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

D. The Contractor shall permit access to, and may be required to provide certified copies of, all of its records pertaining to employment and to its employment practices by the Awarding Authority or the DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City Contracts and, upon request, to provide evidence that it has or will comply therewith.

E. The failure of any Contractor to comply with the Affirmative Action Program provisions of City Contracts may be deemed to be a material breach of a City Contract. The failure shall only be established upon a finding to that effect by the Awarding

Authority, on the basis of its own investigation or that of the DAA. No finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the Contractor.

F. Upon a finding duly made that the Contractor has breached the Affirmative Action Program provisions of a City Contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the Contractor is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the Contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the Contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City Contract, there may be deducted from the amount payable to the Contractor by the City of Los Angeles under the contract, a penalty of ten dollars for each person for each calendar day on which the person was discriminated against in violation of the provisions of a City Contract.

H. Notwithstanding any other provisions of a City Contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

I. The Public Works Board of Commissioners shall promulgate rules and regulations through the DAA and provide to the Awarding Authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an Awarding Authority of the City to accomplish this contract compliance program.

J. Nothing contained in City Contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. By affixing its signature to a Contract that is subject to this article, the Contractor shall agree to adhere to the provisions in this article for the duration of the Contract. The Awarding Authority may also require Contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Program.

1. The Contractor certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in

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10-12-23

a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the Contractor's field of work. The Contractor shall:

- (a) Recruit and make efforts to obtain employees through:
 - (i) Advertising employment opportunities in minority and other community news media or other publications.
 - (ii) Notifying minority, women and other community organizations of employment opportunities.
 - (iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.
 - (iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.
 - (v) Promoting after school and vacation employment opportunities for minority, women and other youth.
 - (vi) Validating all job specifications, selection requirements, tests, etc.
 - (vii) Maintaining a file of the names and addresses of each worker referred to the Contractor and what action was taken concerning the worker.
 - (viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the Contractor has a collective bargaining agreement, has failed to refer a minority, woman or other worker.
- (b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.
- (c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.
- (d) Secure cooperation or compliance from the labor referral agency to the Contractor's contractual Affirmative Action Program obligations.
- (e) Establish a person at the management level of the Contractor to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the Contractor's Equal Employment and Affirmative Action Program policies.
- (f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.

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10-12-23

(g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the Contractor may become involved in fulfilling any of its Contracts.

(h) Document its good faith efforts to correct any deficiencies when problems are experienced by the Contractor in complying with its obligations pursuant to this article. The Contractor shall state:

- (i) What steps were taken, how and on what date.
- (ii) To whom those efforts were directed.
- (iii) The responses received, from whom and when.
- (iv) What other steps were taken or will be taken to comply and when.
- (v) Why the Contractor has been or will be unable to comply.

2. Every contract of \$25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Awarding Authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of Contractors, Subcontractors and suppliers of all racial and ethnic groups; provided, however, that any contract subject to this ordinance shall require the Contractor, Subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the Contractor's, Subcontractor's or supplier's geographical area for such work;
6. The entry of qualified women, minority and all other journeymen into the industry; and


10-12-23

7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

M. Any adjustments which may be made in the Contractor's work force to achieve the requirements of the City's Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

N. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by Contractors engaged in the performance of City Contracts.

O. All Contractors subject to the provisions of this article shall include a similar provision in all subcontracts awarded for work to be performed under the Contract with the City and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the Subcontractors as are applicable to the Contractor. Failure of the Contractor to comply with this requirement or to obtain the compliance of its Subcontractors with all such obligations shall subject the Contractor to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the Contractor's Contract with the City.

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EXHIBIT E

SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM

The City of Los Angeles Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Harbor Department in a manner that reflects the diversity of the City of Los Angeles. The Harbor Department's Small Business Enterprise (SBE) Program was created to provide additional opportunities for small businesses to participate in professional service and construction contracts. An overall Department goal of 25% SBE participation, including 5% Very Small Business Enterprise (VSBE) participation, has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work.

It is the policy of the Harbor Department to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, VSBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBES). The SBE Program allows the Harbor Department to target small business participation, including MBEs, WBEs, and DVBES, more effectively. It is the intent of the Harbor Department to make it easier for small businesses to participate in contracts by providing education and assistance on how to do business with the City, and ensuring that payments to small businesses are processed in a timely manner. **In order to ensure the highest participation of SBE/VSBE/MBE/WBE/DVBES, all proposers shall utilize the City's contracts management and opportunities database, the Regional Alliance Marketplace for Procurement (RAMP), at <http://www.RAMPLA.org>, to outreach to potential subcontractors.**

The Harbor Department defines a SBE as an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121. Go to www.sba.gov for more information. The Harbor Department defines a VSBE based on the State of California's Micro-business definition which is 1) a small business that has average annual gross receipts of \$5,000,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

(2) LOCAL BUSINESS PREFERENCE PROGRAM:

The Harbor Department is committed to maximizing opportunities for local and regional businesses, as well as encouraging local and regional businesses to locate and operate within the Southern California region. It is the policy of the Harbor Department to support an increase in local and regional jobs. The Harbor Department's Local Business Preference Program (LBPP) aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector.

The Harbor Department defines a LBE as:

- (a) A business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or
- (b) A business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.

EXHIBIT E

CAW
10-12-23

EXHIBIT F

Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

(c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.



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(f) **Mandatory Contract Provisions Pertaining to Equal Benefits.** Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.