

**AGREEMENT
FOR
OSMOSE FASTGATE GATEWAY SOFTWARE MAINTENANCE
PROGRAM**

**OSMOSE UTILITIES SERVICES, INC.
AND
LOS ANGELES DEPARTMENT OF WATER AND POWER**

Dated _____
Agreement No.: 47290

TABLE OF CONTENTS

1. **DEFINITIONS**
2. **DELIVERABLES.**
 - a) Services
 - b) Hardware
 - c) Software.
 - d) Documentation
 - e) Authorized Subcontractors
 - f) Site Visits by Contractor
 - g) Permits
3. **CHANGE ORDER PROCESS**
 - a) Process
 - b) No Obligation
4. **PACKING AND SHIPMENT**
 - a) Packing
 - b) Packing Sheets
5. **DELIVERY**
6. **SUBSTITUTIONS AND QUALITY**
 - a) Substitutions
 - b) Quality
 - c) Drawing Quality
 - d) Professional Licensure and Certification
7. **DELIVERY, INSPECTION, ACCEPTANCE AND REJECTION**
 - a) Delivery
 - b) Inspection
 - c) Acceptance and Rejection
 - d) RESERVED
 - e) Facilities
8. **SAMPLES**
9. **SAFETY AND ACCIDENT PREVENTION**
10. **PERSONNEL.**
 - a) Information
 - b) Capacity
 - c) Identification
 - d) Approval
 - e) Control
11. **FORCE MAJEURE**
12. **FEES, INVOICES AND PAYMENT**
 - a) Fees
 - b) Travel and Costs

- c) Invoices
 - d) Payment
 - e) Tax Registration Certificate
 - f) Taxpayer Identification Number ("TIN")
 - g) Third Party Claims
 - h) RESERVED
- 13. TERM AND TERMINATION**
- a) Term
 - b) Termination without Cause
 - c) Termination for Material Breach
 - d) Disqualification
 - e) Remedies Not Exclusive
 - f) Right of Offset
 - g) Suspension of Work
 - h) Errors and Omissions
- 14. TAXES**
- 15. NEWLY MANUFACTURED DELIVERABLES**
- 16. RECORDS AND AUDIT**
- a) Records and Audits
 - b) RESERVED
 - c) Right to Review
- 17. RIGHTS IN WORK PRODUCT AND LICENSES**
- a) Disclosure of Work Product
 - b) Background Technology and Inventions
 - c) Assignment and License
 - d) RESERVED
 - e) Continuing Assurances and Enforcement
 - f) Future Development
 - g) RESERVED
 - h) Documentation License
- 18. CONFIDENTIAL INFORMATION AND SOURCE CODE ESCROW**
- a) Protection
 - b) Protection of Confidential Information
 - c) State Law Requirements - Protection For Personal Information
 - d) Exceptions
 - e) Return of Confidential Information
 - f) Escrow
- 19. INTELLECTUAL PROPERTY AND DELIVERABLES INDEMNITY**
- a) Statement of Indemnity
 - b) Control
 - c) RESERVED
 - d) Claims and Remediation
 - e) Use of Funds

- 20. MAINTENANCE AND SUPPORT**
 - a) RESERVED
 - b) Software Maintenance
 - c) Failure to Provide Maintenance
 - d) RESERVED

- 21. TASK ORDER DEVELOPMENT AND APPROVAL**
 - a) Task Order Proposal
 - b) Task Order Development
 - c) General
 - d) Viruses
 - e) Disclaimer

- 22. WARRANTIES**
 - a) Deliverables
 - b) Services
 - c) General
 - d) Viruses
 - e) Disclaimer

- 23. LIMITATION OF LIABILITY**

- 24. SURVIVAL AND ORDER OF PRECEDENCE**

- 25. GENERAL**
 - a) Governing Law
 - b) Attorneys' Fees
 - c) Forum
 - d) Injunctive Relief
 - e) Notices
 - f) Agency
 - g) Waiver
 - h) Severability
 - i) Headings
 - j) Assignment
 - k) Counterparts
 - l) Relationship of the Parties
 - m) Entire Agreement

EXHIBIT A - STATEMENT OF WORK

EXHIBIT B - GOVERNMENT AND INSURANCE TERMS

EXHIBIT C - ESCROW AGREEMENT

EXHIBIT D - RESERVED

EXHIBIT E - BACKGROUND TECHNOLOGY

EXHIBIT F - RESPONSE

EXHIBIT G - INVOICE CRITERIA

EXHIBIT H - PRIOR WORK PRODUCT

EXHIBIT I - RESERVED

EXHIBIT J - SOFTWARE MAINTENANCE

EXHIBIT K - RIGHT TO AUDIT CLAUSE

EXHIBIT L - CONTRACT INSURANCE REQUIREMENTS

**EXHIBIT M - CONFIDENTIALITY AGREEMENT FOR LADWP PROPRIETARY
INFORMATION**

EXHIBIT N - EQUAL BENEFITS ORDINANCE WAIVER

EXHIBIT O - ALLOWABLE TRAVEL AND LIVING EXPENSES

**AGREEMENT
FOR
INFORMATION TECHNOLOGY PRODUCTS & SERVICES**

THIS AGREEMENT FOR INFORMATION TECHNOLOGY PRODUCTS & SERVICES ("Agreement"), is entered into this ___ day of _____, 20__ by and between the LOS ANGELES DEPARTMENT OF WATER AND POWER (the "LADWP"), acting by and through the BOARD OF WATER AND POWER COMMISSIONERS (Board), and *Osmose Utilities Services, Inc.*, a Delaware corporation with a principal place of business at 215 Greencastle Road, Tyrone, GA 30290 ("Contractor").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **DEFINITIONS.** Capitalized terms used in this Agreement shall have the following meanings:

"Authorized Subcontractor" shall mean a subcontractor or service provider of Contractor who has been approved by the LADWP beforehand and in writing to carry out any part of Contractor's obligations under this Agreement.

"Background Technology" shall have the meaning assigned to it in Subsection 17(b) ("Background Technology and Inventions").

"Board" shall mean Board of Water and Power Commissioners.

"Change Order" shall have the meaning assigned to it in SECTION 3 ("CHANGE ORDER PROCESS").

"Confidential Information" shall have the meaning assigned to it in Subsection 18(a) ("Protection").

"Contract Administrator" shall mean the LADWP's representative who has been identified as such from time to time by the LADWP, and who shall have authority to act for the LADWP under this Agreement.

"Contractor's Quality Assurance Program" shall mean that program, if any, described as such in EXHIBIT D ("CONTRACTOR'S QUALITY ASSURANCE PROGRAM").

"Deliverables" shall mean collectively all items provided or to be provided by Contractor hereunder, including without limitation all Hardware, Software and Services.

"LADWP Work Product" shall have the meaning assigned to it in Subsection 17(a) ("Disclosure of Work Product").

"Developed Software" shall mean Software, in both Object Code and Source Code formats, which is not Existing Software, and which is identified as such in a Statement of Work.

"Disclosing Party" shall have the meaning assigned to it in Subsection 18(a) ("Protection").

"Documentation" shall mean all information reasonably necessary or desirable, or as described in a Statement of Work, to be provided to Contractor by the LADWP which describes the form, features or operation of the Deliverables and which is contained in a tangible medium, such as written format, tape, magnetic or other media, and including without limitation all Updates of

Documentation and Documentation which the LADWP may require at any time.

“Effective Date” shall mean the first date upon which all of the following shall have occurred: (a) this Agreement has been signed by the LADWP by the person authorized by the LADWP to sign on its behalf and also signed by the Contractor’s authorized representative; (b) this Agreement has been approved by the City’s Council or by the Board, or by the City’s or the Board’s officer or employee authorized to give such approval; and (c) the Office of the City Attorney has indicated in writing its approval of this Agreement as to form and legality.

“Error” shall mean any material failure of any Deliverable to conform with its Specifications.

“Escrow Agent” shall have the meaning assigned to it in **Subsection 18(f) (“Escrow”)**.

“Escrow Agreement” shall mean a written agreement in substantially the form and format as described in **EXHIBIT C (“ESCROW AGREEMENT”)**.

“Escrow Materials” shall have the meaning assigned to it in **Subsection 18(f) (“Escrow”)**.

“Existing Software” shall mean that Software, in Object Code format (but subject to **Subsection 18(f) (“Escrow”)**), which exists as of the Effective Date, and which is identified as such in a Statement of Work, and including Documentation and Updates.

“Fees” shall mean those amounts to be paid to Contractor hereunder, and which are described as such in the Statement of Work.

“Force Majeure” shall have the meaning assigned to it in **SECTION 11 (“FORCE MAJEURE”)**.

“Hardware” shall mean any and all hardware, machines, devices, computers, or similar

equipment described as such in a Statement of Work, including without limitation all associated supplies, materials and spare parts.

“Hardware Maintenance” shall have the meaning assigned to it in **Subsection 20(a) (“Hardware Maintenance”)**.

“Indemnified Parties” shall have the meaning assigned to it in **SECTION 19 (“INTELLECTUAL PROPERTY AND DELIVERABLES INDEMNITY”)**.

“Invention” shall mean any and all trade secrets, inventions, mask works, ideas, processes, formulae, Source Codes, Object Codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques existing as of the Effective Date or coming into existence thereafter.

“Invoice” shall have the meaning assigned to it in **Subsection 12 (c) (“Invoices”)**.

“Job Cost Report” shall mean detailed, written or electronic records of the Contractor which describe fully Contractor’s costs in its performance under this Agreement, and including all periodic and cumulative amounts to date of revenue, costs, gross profit and billing information against bid projected costs, and sub-accounts for the different types of all cost categories.

“Maintenance” shall mean: (i) Hardware Maintenance; and (ii) Software Maintenance.

“Object Code” shall mean computer software programs, not readily perceivable by humans, and which are suitable for machine execution without the intervening steps of interpretation or compilation.

“Prior Work Product” shall have the meaning assigned to it in **Subsection 17(a) (“Disclosure of Work Product”)**.

"Project Plan" shall mean that portion of the SOW specifying the Deliverables and the Schedule (including without limitation all start and end dates for all Tasks).

"Proprietary Rights" shall have the meaning assigned to it in **Subsection 17(c)** ("**Assignment and License**").

"Receiving Party" shall have the meaning assigned to it in **Subsection 18(a)** ("**Protection**").

"Response" shall mean Contractor's written response to the RSSP in **EXHIBIT F** ("**RESPONSE**").

"RSSP" shall mean the LADWP's "Request for Single/Sole Source Proposal", number **90248**.

"Schedule" shall mean the schedule of Deliverables, dates and Fees described as such in a Statement of Work.

"Services" shall mean collectively, the Tasks described in each Statement of Work.

"Shrink-Wrap Agreement" shall mean any form of license or other agreement included with any Deliverables hereunder, and including without limitation any embedded "click-wrap" license agreement, or any license agreement which is presented under shrink-wrap or other plastic coverings the removal of which may be deemed to effect agreement with the terms of such license agreement.

"Software" shall mean collectively: (i) Existing Software; and (ii) Developed Software, and in all cases including all Documentation.

"Software Maintenance" shall have the meaning assigned to it in **Subsection 20(b)** ("**Software Maintenance**").

"Source Code" shall mean computer software programs not in machine readable format and which is not suitable for machine execution without the intervening steps of interpretation or compilation.

"Specifications" shall mean collectively all operational, functional or other specifications with respect to any Deliverables, including without limitation all Documentation and those specifications described as such in the Statement of Work and the Response.

"Statement of Work" shall mean the description of the work to be carried out by Contractor, the Deliverables to be provided by Contractor, the Schedule to be met by Contractor, and the Fees to be paid, and contained in the format described in **EXHIBIT A** ("**STATEMENT OF WORK**").

"Task Assignment" shall mean a written description of work activity provided by the LADWP describing work to be carried out by Contractor, and consisting of at least one (1) Task and an associated Fee.

"Task Order" shall be synonymous with **"Task Assignment"**.

"Tasks" shall mean the smallest units of work activity described under each Statement of Work.

"Update" shall mean any modification of or addition to the Software or Documentation, including without limitation all new releases, versions, sub-versions, corrections, "patches" and maintenance releases, which Contractor may prepare, obtain, or have prepared at any time.

"Viruses" shall have the meaning assigned to it in **Subsection 22(d)** ("**Viruses**").

"Work Product" shall have the meaning assigned to it in **SECTION 17** ("**RIGHTS IN WORK PRODUCT AND LICENSES**").

2. DELIVERABLES.

a) **Services.** Contractor shall perform Services, strictly in accordance with each Statement of Work.

b) **Hardware.** Contractor shall prepare and deliver to the LADWP all Hardware, strictly in accordance with each Statement of Work, all Hardware.

c) **Software.**

Existing Software. Contractor shall provide Existing Software according to the Statement of Work, but in no event later than the delivery of any Developed Software with which such Existing Software is to be integrated pursuant to such Statement of Work.

Developed Software. Contractor shall prepare and deliver to the LADWP all Developed Software, strictly in accordance with each Schedule.

d) **Documentation.** Contractor shall prepare and deliver to the LADWP all Documentation, strictly in accordance with each Schedule.

e) **Authorized Subcontractors.** With prior approval of the LADWP, the Contractor may enter into contracts and agreements with Authorized Subcontractors for the performance of portions of this Agreement. The Contractor shall at all times be responsible for the acts, errors or omissions of its Authorized Subcontractors and persons directly or indirectly employed by them. Nothing in this Agreement shall constitute any contractual relationship between any others and the LADWP or any obligation on the part of the LADWP to pay, or to be responsible for the payment of, any sums to any Authorized Subcontractors or any other third party. No such Authorized Subcontractor shall be a third

party beneficiary of this Agreement. Upon written request from the Contract Administrator, the Contractor shall promptly supply the LADWP with all subcontractor agreements.

f) **Site Visits by Contractor.** All visits by Contractor to the LADWP's facilities must have prior approval by the Contract Administrator. Visiting Contractor representatives must carry LADWP-issued identification badges, and conform to such security, safety and other requirements as the LADWP may from time to time impose.

g) **Permits.** The Contractor and its Authorized Subcontractors, officers, agents and employees shall obtain and maintain all permits and licenses necessary for the Contractor's performance hereunder and shall pay any third-party fees required therefor.

3. CHANGE ORDER PROCESS.

a) **Process.** Unless expressly agreed to otherwise in a Statement of Work, the Specifications, the Schedule and the Fees are as described in such Statement of Work, and shall not be changed without the prior, written consent of the LADWP and the Contractor. Provided, however, that in the event that the LADWP wishes to change the Specifications or the Schedule, then the LADWP shall so notify the Contractor in writing, describing the changes to be made. The Contractor shall respond to such notification promptly in writing (and in no event later than ten (10) days thereafter) describing any increase in Fees which the Contractor seeks with respect to such changes. If thereafter agreed to by the parties, the parties shall record their agreement with respect to such changes, and increase in Fees (if any) in a written change order ("Change Order"), to be signed by the parties, and which will amend this Agreement. Invoices for Fees pursuant to Change Orders

will be identified and issued separately from other Invoices.

b) No Obligation. EXCEPT AS PROVIDED IN THIS SECTION 3 ("CHANGE ORDER PROCESS"), THE LADWP SHALL HAVE NO OBLIGATION TO PAY, AND SHALL NOT PAY, ANY INCREASE IN FEES REGARDLESS OF ANY ADDITIONAL WORK CARRIED OUT UNDER THIS AGREEMENT BEYOND THAT WHICH IS EXPRESSLY DESCRIBED IN EACH STATEMENT OF WORK.

4. PACKING AND SHIPMENT.

a) Packing. Contractor agrees to pack all Deliverables to be shipped hereunder in suitable containers for protection in shipment and storage, and in accordance with applicable Specifications. Each container of a multiple container shipment shall be identified so as to:

(i) conspicuously show the number of the container and the total number of containers in the shipment; and

(ii) conspicuously show the number of the container in which the packing sheet has been enclosed; and

(iii) conspicuously show such other information as the LADWP may from time to time require.

b) Packing Sheets. All shipments of Deliverables by Contractor or its Authorized Subcontractors must include written packing sheets identifying: the Agreement number, the purchase order, item number; quantity and unit of measure; part number and description of the Deliverables shipped; and appropriate evidence of inspection, if required by the LADWP. Only Deliverables under this Agreement shall be listed on any particular packing sheet, and items under any other

contracts between the LADWP and Contractor shall not be included thereon.

5. DELIVERY. Contractor shall strictly adhere to the Schedule specified in this Agreement. Time shall be of the essence of Contractor's performance under this Agreement. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities of Deliverables specified herein are the only quantities required. If Contractor delivers in excess of the quantities of Deliverables specified herein, the LADWP shall not be required to make any payment for the excess Deliverables, and may at the LADWP's discretion dispose of such excess Deliverables, return such excess Deliverables to Contractor at Contractor's expense and risk, or make such excess Deliverables available for pick-up by Contractor. Notwithstanding the above Contractor shall not be deemed to be in violation nor shall Contractor suffer any penalties from delays in the performance of the Work that arise from delays that are caused or partially caused by the LADWP.

6. SUBSTITUTIONS AND QUALITY.

a) Substitutions. Substitution of any other goods or services for Deliverables called for in any Statement of Work may not be tendered without the prior, written consent of the Contract Administrator. Contractor shall not use any specification in lieu of the Specifications contained in each Statement of Work without the prior, written consent of the LADWP.

b) Quality. The Contractor's work shall reflect competent professional knowledge, judgment, and accepted industry practice. Subject to SECTION 13 ("TERM AND TERMINATION"), the Contractor shall promptly correct, or remedy any work, errors, or omissions, at its sole expense, which do not conform to the provisions of this Agreement.

As this Agreement is for software maintenance, Contractor shall not be required to remedy any work, errors, or omissions after the termination of this Agreement, provided that such work, errors or omissions were not caused by Contractor during the term of this Agreement.

c) **Drawing Quality.** Drawings provided for in any Statement of Work shall belong solely to the LADWP, and shall conform to the best standards of the drafting profession. Information in all such drawings shall be organized in a logical, systematic manner, shall be legible and clear, and shall fully conform with such Statement of Work.

d) **Professional Licensure and Certification.** If so provided in the RSSP, drawings shall be signed and sealed by professional engineers and architects with appropriate legal registration. To the extent that professional certification is required given the scope of work, said certification shall be provided with Response.

7. DELIVERY, INSPECTION, ACCEPTANCE AND REJECTION.

a) **Delivery.** Contractor shall deliver all Deliverables according to the Schedule to such addresses as may be from time to time specified by the LADWP.

b) **Inspection.** The LADWP shall have a reasonable period, in no event less than thirty (30) days, commencing with the date of delivery of each shipment of Deliverables to inspect and test such Deliverables to ensure that such Deliverables fully conform to this Agreement, fully conform to their Specifications, fully conform to their Documentation, and fully comply with all representations and statements made by Contractor with respect thereto (including, without limitation, any corresponding Response). Contractor shall fully cooperate

and assist the LADWP in the course of such inspection and delivery at no cost to the LADWP. In the event of any failure of such Deliverables to so fully comply with any of the foregoing (each such condition to be considered an "Error"), the LADWP may, at its discretion and upon notice, reject any or all such Deliverables. In such case, Contractor shall within forty-eight (48) hours of such notice remove all such Deliverables from the LADWP's premises (at Contractor's sole expense), and replace such Deliverables with conforming Deliverables promptly (and in no event later than five (5) business days thereafter).

c) **Acceptance and Rejection.** Upon the completion of the inspection and testing described in **Subsection 7(b) ("Inspection")**, the LADWP shall inform Contractor of whether the corresponding Deliverables are accepted or rejected by the LADWP. Any failure of the LADWP to provide such notice within thirty (30) days of delivery shall be deemed an automatic acceptance thereof. The Contractor shall remove all rejected Deliverables promptly, and in no event later than five (5) days after such rejection. The LADWP shall be free to dispose of any Deliverables which are not so removed. Acceptance of Deliverables shall not be construed to waive any warranty rights that the LADWP might have at law or by this Agreement.

d) **RESERVED.**

e) **Facilities.** Contractor and its Authorized Subcontractors shall provide all reasonable facilities for the safety and convenience of the LADWP's inspectors at no additional cost to the LADWP. Contractor shall furnish to the LADWP and its agents all information and data as may be reasonably required to perform their inspection.

8. SAMPLES. Contractor shall promptly provide to the LADWP upon reasonable request from time to time, and without cost, samples of Deliverables for inspection and testing. Such samples must be identical in all respects to the Deliverables specified in each corresponding Statement of Work. Such samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned to Contractor at Contractor's risk and expense.

9. SAFETY AND ACCIDENT PREVENTION. The LADWP agrees to provide a suitable and safe environment at its facilities with respect to Services to be provided under this Agreement. The parties understand and agree that Contractor has not included in its charges any expense for dealing with or removing potentially hazardous substances, such as asbestos, unless otherwise expressly provided by a Statement of Work. If not so provided in such Statement of Work, the LADWP shall be responsible for handling such substances at its own cost. In performing work under this Agreement, Contractor shall conform to all specific safety requirements contained in the Agreement and as required by law or regulation. Contractor shall take any additional precautions as the LADWP may reasonably require for safety and accident prevention purposes, and shall at all times exercise reasonable and prudent judgment with respect thereto. Any violation of such requirements, laws or regulations shall be considered a material breach of this Agreement.

10. PERSONNEL.

a) Information. The LADWP shall provide reasonably necessary representatives with authority to act on the LADWP's behalf with respect to approvals, requests, and meeting scheduling.

b) Capacity. Contractor warrants that the size of the staff employed by the Contractor in its performance hereunder shall be reasonably adequate in number and quality at all times to perform the work required by this Agreement and to add such addition personnel as are necessary to accomplish any work required by any Change Order.

c) Identification. The Contractor shall furnish the LADWP from time to time upon request the names, titles, and qualifications of its key project personnel and subcontractors, including without limitation individual resumes, and the tasks to be performed by such individuals. Upon receipt of such request, the Contractor shall respond within two (2) business days.

d) Approval. The Contract Administrator shall have the right to interview and approve all personnel of Contractor and Authorized Subcontractors. Resumes of individual personnel will be reviewed and approved by the LADWP's Contract Administrator before the individual shall be assigned work. The Contractor shall minimize changes to any Contractor personnel with respect to any Statement of Work. Any unreasonable assignment or discharge of such personnel may, at the LADWP's option, be deemed a material breach of this Agreement by Contractor. The LADWP shall have the right to request key personnel changes and to review and approve key personnel changes proposed by the Contractor. No change can be made without LADWP approval. The LADWP shall have the right to require removal of any personnel with or without cause, which removal shall be effected no later than seventy-two (72) hours, or in the case of any removal requested for security or work rule reasons, immediately.

e) Control. The Contractor's and the Authorized Subcontractors' personnel shall at

all times remain under the control of the Contractor.

11. **FORCE MAJEURE.** If either party is unable to perform its obligations because of strikes, lockouts, labor disputes, embargos, acts of God, governmental regulations, judicial orders, enemy or hostile governmental action beyond the reasonable control of the Contractor or its Authorized Subcontractors ("Force Majeure"), then such party shall immediately notify the other party in writing, and such party's performance shall be suspended for the period equal to the period time of such cause for suspension of performance.

12. **FEES, INVOICES AND PAYMENT.**

a) **Fees.** The LADWP shall pay the Fees described in each Statement of Work for Services and Deliverables which have been accepted by the LADWP within thirty days of receipt. Any Fees called for in any Statement of Work shall not increase for at least one (1) year after the date of such Statement of Work, unless expressly agreed to otherwise by the LADWP. Unless expressly stated in a Statement of Work, all salaries, wages, or other payments (including without limitation any overtime) to any third parties, Authorized Subcontractors or employees, shall be the sole responsibility of the Contractor, and the Contractor hereby agrees to fully indemnify, defend and hold harmless the LADWP with respect thereto.

b) **Travel and Costs.** Travel time of the Contractor's personnel shall not be charged to, or paid by, the LADWP unless specifically provided for in the Response and the Statement of Work. Any allowed travel time shall be at the LADWP's own normal rates, without allowance for premium or overtime, in accordance with **EXHIBIT A ("STATEMENT OF WORK")** and

EXHIBIT O ("ALLOWABLE TRAVEL AND LIVING EXPENSES").

c) **Invoices.** Upon the LADWP's acceptance of each shipment of Deliverables (including without limitation acceptance of completed Services), the LADWP shall so notify Contractor, and Contractor shall issue a written invoice ("Invoice") to the LADWP with respect thereto. Each such Invoice shall meet all the invoice criteria described in **EXHIBIT G ("INVOICE CRITERIA")**, and shall contain the contract/purchase order number, the vendor code number, the City of Los Angeles Business Tax Registration Certificate Number, and the identification of material, equipment and/or services covered by the Invoices. In all cases the amount of applicable sales tax or use tax shall be separately stated on the Invoice. All Invoices shall be accompanied by such written documentation as the LADWP may reasonably require in order to support the amount and calculation of all corresponding Fees. Invoices for Services shall be issued monthly for all Services provided during the immediately preceding month.

d) **Payment.** Such Invoices, if correct, will be certified, and paid within thirty (30) days after receipt of Invoice. Invoice payments will not be made if the Invoice is received more than six (6) months after acceptance of corresponding Deliverables. No such Invoice shall be certified for payment, or paid, unless and until it shall first conform with **Subsection 12(c) ("Invoices")** above. In the event of any dispute of any Fees under any Invoices, the LADWP agrees to make payment of all undisputed amounts as hereinabove provided.

e) **Tax Registration Certificate.** Contractor shall obtain and keep in full force and effect during the Term of this Agreement all "Business Tax Registration Certificates" required by the City of Los Angeles Business

Tax Ordinance, Article 1, Chapter II, Section 21.00 and following, of the Los Angeles Municipal Code. Contractor's current Business Tax Registration Certificate Number or, for those firms that are exempt, a Vendor Registration Number, must be shown on all Invoices submitted for payment.

f) **Taxpayer Identification Number ("TIN").** Contractor hereby represents and warrants that its TIN is **35-2175310**. No Fees shall be payable or paid to Contractor unless and until such TIN is verified by the LADWP as valid.

g) **Third Party Claims.** The Contractor shall promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Agreement so as to prevent any lien or other claim under any provision of law from arising against any LADWP property (including reports, documents, and other tangible matter or Deliverables produced hereunder), against the Contractor's rights to payments hereunder, or against the City, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

h) **RESERVED.**

13. **TERM AND TERMINATION.**

a.1) **Term.** The term of this Agreement ("Term") shall commence upon the Effective Date and shall expire *three years* thereafter, unless earlier terminated as hereinafter provided.

a.2) **Renewal Options.** At the Department's sole option, the term of this Agreement may be extended for up to an additional 4 (four) years, exercisable in yearly increments, or any portion thereof.

b) **Termination without Cause.** This Agreement may be terminated by the

LADWP, without cause, upon written notice. Upon receipt of such notice, the Contractor shall immediately stop all work under this Agreement. The Contractor shall be entitled to payment of Fees for all Deliverables completed, including without limitation Services provided (in both cases where accepted by the LADWP), until the date of such notice, and also to reimbursement for reasonable and documented re-stocking charges imposed on Contractor by third party suppliers due to such termination, where such charges have been called to the LADWP's attention beforehand and in writing. The Contractor shall then deliver to the LADWP, in an organized and usable form, all Deliverables "work in process" as of such date.

c) **Termination for Material Breach.** Either party may terminate this Agreement upon notice, in whole or in part, for the material breach of this Agreement by the other party (including without limitation, in the case of Contractor, any such breach by Contractor's Authorized Subcontractors) which has remained uncured for a period of ten (10) days from the date of notice thereof to the breaching party. Notwithstanding the above, Contractor reserves the right to submit a business plan to LADWP to resolve any issues regarding breach that cannot be resolved within said ten day period and LADWP agrees to give reasonable consideration to said business plan. Without limiting the generality of the foregoing: (i) any late payment of Fees by the LADWP shall not, in an of itself, be deemed a material breach of this Agreement, unless such non (or late) payment exceeds a period of ninety (90) days from the date of the receipt of the original invoice in which case the non-payment shall be deemed a material breach of the Agreement; and (ii) any failure of Contractor to timely perform Services or deliver other Deliverables according to any Schedule and this Agreement, shall be deemed a material

breach hereof, and in such case the LADWP shall also have the right to reject all such Deliverables. In the case of such late performance or delivery by Contractor, the LADWP may, in addition to any rights and remedies the LADWP may also have, require Contractor, at Contractor's expense, to ship any Deliverables via air freight or by other expedited routing means (at no cost to the LADWP) to avoid or minimize actual or potential delay. Also, in the event the Agreement is terminated in accordance with this **Subsection 13(c) ("Termination for Material Breach")**, the LADWP may also take possession of all Deliverables in process and of all materials, tools, equipment, and property of the Contractor, which have been provided in connection with the work, and may complete the work by whatever method or means the LADWP may select. The cost of completing the work shall be deducted from the balance which would have been due the Contractor had the Agreement not been terminated and the work completed in accordance with the Agreement.

d) Disqualification. In the event Contractor receives one (1) or more notices of material breach as described in **Subsection 13(c) ("Termination for Material Breach")**, whether such material breaches are cured or not, the LADWP may consider such material breaches in making any subsequent determination of responsibility with respect to future awards.

e) Remedies Not Exclusive. Any election by the LADWP to seek any remedy under this **SECTION 13 ("TERM AND TERMINATION")**, including without limitation any right to reject Deliverables or to require expedited shipping, shall not limit any other rights or remedies which the LADWP may have with respect to any breach of this Agreement.

f) Right of Offset. The LADWP reserves the right to offset any and all costs and damages suffered by the LADWP under this Agreement against any outstanding invoices or amounts otherwise owed to the Contractor or to make a claim against the Contractor therefor.

g) Suspension of Work. The Contract Administrator may orally direct the Contractor to suspend, and to subsequently resume performance of all or any part of the work. Such direction shall be confirmed in writing. An equitable adjustment in the work completion schedule and corresponding Fees (if fixed price) shall be negotiated and confirmed by a Change Order or a revision to a task assignment if such suspension impacts the cost of the work and/or work completion schedule. The LADWP shall pay the Fees due for the suspended work up to the effective date of suspension notice and shall resume Fee payments effective as of the work resumption date.

h) Errors and Omissions. The Contractor will be responsible for correcting or remedying any errors or omissions which occur in performance of the services as long as LADWP is current in its maintenance contract. The cost of correcting or remedying any such error or omission shall be borne by the Contractor. Revising Contractor-prepared documents at the request of the LADWP to incorporate comments by the public or by agencies having jurisdiction in matters of the particular task assignment is not considered to be a remedy of errors or omissions, but is considered an integral part of document preparation which may be called for by a Task Assignment.

14. TAXES. Unless otherwise required by law, the LADWP is exempt from Federal excise taxes. The LADWP will only pay for any State or local sales or use taxes on the Services rendered or other Deliverables

supplied to the LADWP pursuant to this Agreement.

15. NEWLY MANUFACTURED DELIVERABLES. All Deliverables furnished under this Agreement shall contain only newly manufactured items. Used or reconditioned Deliverables are prohibited, unless otherwise expressly agreed to by the LADWP in a corresponding Statement of Work.

16. RECORDS AND AUDIT.

a) Records and Audits.

Incorporated by Reference. See Exhibit K

b) RESERVED.

c) Right to Review. The LADWP reserves the right to review any portion of the Services performed by the Contractor under this Agreement, and the Contractor agrees to cooperate to the fullest extent. Contractor shall furnish to the LADWP such reports, statistical data, and other information pertaining to the Contractor's Services as shall be reasonably required by the LADWP. The right of the LADWP to conduct such review shall not relieve the Contractor of any obligation set forth herein.

17. RIGHTS IN WORK PRODUCT AND LICENSES.

a) Disclosure of Work Product. LADWP Work Product shall be limited in meaning to the proprietary data that is entered into Contractor's software, expressly excluded from LADWP Work Product is the Contractor's software and any improvements or derivations thereof. Contractor agrees that any and all Inventions made, learned, derived, conceived, written, created or first reduced to practice in the performance of work under this Agreement shall be the sole and exclusive property of LADWP.

b) Background Technology and Inventions. Contractor shall specifically describe and identify in **EXHIBIT E ("BACKGROUND TECHNOLOGY")** all existing technology which Contractor intends to use in the course of its performance hereunder ("Background Technology").

c) Assignment and License. LADWP is granted a limited use license.

d) RESERVED.

e) Continuing Assurances and Enforcement. Contractor agrees to cooperate with the LADWP or its designee(s), both during and after the Term of this Agreement, in the procurement and maintenance of the LADWP's rights in the LADWP Work Product and to execute, when requested, any other documents deemed necessary by the LADWP to carry out the purpose of this Agreement. Without limiting the generality of the foregoing, Contractor agrees to execute upon the LADWP's request a signed assignment of copyright to the LADWP in a format reasonably required by the LADWP. To the extent the LADWP is unable to procure Contractor's cooperation in the foregoing, Contractor hereby irrevocably appoints the LADWP as its attorney in fact to take all such actions and to execute such documents. Contractor shall assist the LADWP in every proper way to obtain, and from time to time enforce, United States and foreign Proprietary Rights relating to the LADWP Work Product in any and all countries. To that end Contractor shall execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as the LADWP may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such Proprietary Rights and the assignment thereof. In addition, Contractor shall execute, verify and deliver assignments of such Proprietary Rights to the LADWP or its designee.

Contractor's obligation to assist the LADWP with respect to Proprietary Rights relating to such the LADWP Work Product in any and all countries shall continue beyond the expiration or termination of this Agreement, but the LADWP shall compensate Contractor at a reasonable rate after such expiration or termination for the time actually spent by Contractor at the LADWP's request on such assistance.

f) Future Development. This Agreement shall not preclude the Contractor from developing materials outside this Agreement that are competitive with, irrespective of their similarity to, Deliverables which are delivered to the LADWP pursuant to this Agreement.

g) RESERVED.

h) Documentation License. Contractor hereby grants to the LADWP a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, paid up, transferable license, including the right to grant sublicenses through multiple tiers, with respect to the Documentation in order to use, copy, execute, publicly perform, publicly display, digitally perform and create derivative works of the Documentation solely in connection with the Department's exercise of its rights under this Agreement.

18. CONFIDENTIAL INFORMATION AND SOURCE CODE ESCROW.

a) Protection. Each party (the Disclosing Party") may from time to time during the term of this Agreement disclose to the other party (the "Receiving Party") certain non-public information regarding the Disclosing Party's business, including technical, marketing, financial, personnel, planning and other information ("Confidential Information"). The Disclosing Party shall mark all such Confidential Information in tangible form with the legend 'confidential',

'proprietary', or with similar legend. With respect to Confidential Information disclosed orally, the Disclosing Party shall describe such Confidential Information as such in writing within thirty (30) days after the date of oral disclosure. Regardless of whether so marked, however, any non-public information regarding the Developed Software (in Source Code and Object Code formats), shall be deemed to be the Confidential Information of the LADWP.

b) Protection of Confidential Information. Except as expressly permitted by this Agreement, the Receiving Party shall not disclose the Confidential Information of the Disclosing Party (using the same degree of care which the Receiving Party ordinarily uses with respect to its own proprietary information, but in no event with less than reasonable care). The Receiving Party shall also not use the Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and shall limit the disclosure of the Confidential Information of the Disclosing Party to the employees or agents of the Receiving Party who have a need to know such Confidential Information of the Disclosing Party to the employees or agents of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement, and who are, with respect to the Confidential Information of the Disclosing Party, bound in writing by confidentiality terms no less restrictive than those contained herein. The Receiving Party shall provide copies of such agreements to the Disclosing Party upon request; provided, however, that such agreement copies shall themselves be deemed the Confidential Information of the Receiving Party. Notwithstanding the foregoing, after the expiration or termination of this Agreement and the return by the Receiving Party of the Confidential Information of the Disclosing Party as provided in subsection 18(e) ("Return of Confidential Information"),

the Receiving Party shall be free to use internally (but not disclose) any ideas, concepts and know-how contained in such Confidential Information: (i) which relate to the business of the Receiving Party; and (ii) which have been retained mentally by employees of the Receiving Party through the course of their performance under this Agreement.

c) State Law Requirements - Protection For Personal Information State law (See S.B. 1386 and A.B. 1950) requires a person or entity that owns or licenses computerized data that includes personal information, of a California resident, to disclose any breach of the data base security system and to implement and maintain procedures and practices to protect personal information from unauthorized access, destruction, use, modification, or disclosure and, shall require by contract, that non-affiliated third party recipients of such personal information, implement and maintain security procedures and practices to protect the personal information. Accordingly, vendor agrees to implement and maintain such security procedures and practices, in conformance with S.B. 1386 and A.B. 1950, with respect to any personal identification information received under this agreement, as well as notify the City of any breach in security. In addition, vendor shall not share, disclose, or in anyway transfer the personal identification information without the written approval of the LADWP.

Vendor shall be responsible for any and all liabilities, including but not limited to those stated below in this paragraph, that result from any violation of S.B. 1386 or A.B. 1950 that Vendor, its employees, agents, or subcontractors may cause pursuant to the activities performed under this contract. Accordingly, Vendor agrees to indemnify and hold harmless the City of Los Angeles, its respective agencies, LADWPs, boards, all of

their commissioners, officers, employees, and authorized agents, and, at the option of the City of Los Angeles, to provide a defense, reasonably acceptable to the LADWP, against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever caused or brought by any person, including any aggrieved party, as defined in S.B. 1386, arising out of Vendor's breach of any of its duties and obligations under S.B. 1386 or A.B. 1950. The indemnification herein includes all awards, damages, interest, costs and attorneys' fees, if any. Such defense will be consistent with City Charter, Sections 271, 272 and 273.

d) Exceptions. Notwithstanding anything herein to the contrary, Confidential Information shall not be deemed to include any information which: (i) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party as reflected in the written records of the Receiving Party; (ii) was or has been disclosed by the Disclosing Party to a third party without obligation of confidence; (iii) was or becomes lawfully known to the general public without breach of this Agreement; (iv) is independently developed by the Receiving Party without access to, or use of, the Confidential Information; (v) is approved in writing by the Disclosing Party for disclosure by the Receiving Party; (vi) is required to be disclosed in order for the Receiving Party to enforce its rights under this Agreement; or (vii) is required to be disclosed by law or by the order of a court or similar judicial or administrative body; provided, however, that the Receiving Party shall notify the Disclosing Party of such requirement immediately and in writing, and shall cooperate reasonably with the Disclosing Party, at the Disclosing Party's expense, in the obtaining of a protective or similar order with respect thereto.

e) Return of Confidential Information.

The Receiving Party shall return to the Disclosing Party, destroy or erase all Confidential Information of the Disclosing Party in tangible form upon the written request of the Disclosing Party (except for Deliverables and any other items which the LADWP is otherwise entitled to retain under this Agreement) and the Receiving Party shall certify promptly and in writing that it has done so.

f) Escrow.

Osmose shall provide, at the Department's expense, a copy of the complete and generable source code in an escrow account, including all supporting documentation, if any, with the Software as it is received pursuant hereto. The source code agreement to be entered into shall contemplate that the source code shall only be released to the LADWP upon Osmose's bankruptcy or ceasing to carry out its activities. The cost of this service is not to exceed \$13,300 over the Term. In the event LADWP fails to reimburse Contractor for the costs associated with the escrow account within sixty (60) days of the presentation of an invoice then Contractor reserves the right to terminate the escrow account.

19. INTELLECTUAL PROPERTY AND DELIVERABLES INDEMNITY.

a) Statement of Indemnity. Contractor agrees that from and after the Effective Date it shall fully indemnify, defend and hold harmless the LADWP, the Board, and its and their affiliates, officers, directors, agents, employees, customers and assigns (the "Indemnified Parties") from and against any and all claims, losses, liabilities, damages and costs (including attorneys' fees and court costs) arising from or relating to any Deliverables or arising from or relating to any claim, demand, threat, suit or proceeding by

any third party regarding the Deliverables, including without limitation any claims of injury to persons or property, or of intellectual property infringement or misappropriation, by any third party. The LADWP shall notify Contractor promptly of any third party claim in connection with the foregoing, shall cooperate reasonably with Contractor in connection therewith (at Contractor's expense), in the defense or settlement of the foregoing. The LADWP shall have the right at its own expense to be represented in any action related to the foregoing by counsel of its own choice, and shall cooperate reasonably with Contractor with respect to such litigation. Notwithstanding the above, Contractor shall not be required to indemnify LADWP from any claims of intellectual property if the Deliverables have been altered in any manner other than by the contractor or if the Deliverables are being used in any manner not expressly authorized by Contractor.

b) Control. In Contractor's defense of the LADWP, negotiation, compromise, and settlement of any foregoing infringement or misappropriation action, the LADWP shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

c) RESERVED.

d) Claims and Remediation. If Contractor receives notice of a claim, demand, threat, suit or proceeding regarding alleged intellectual property infringement or misappropriation by the Deliverables, or if in Contractor's judgment such a claim is likely, Contractor may, at its sole expense, procure for LADWP ownership of, or the right to continue using, the Deliverables, modify the Deliverables so that they are no longer infringing, or replace the Deliverables with other items of the same technical

specifications and the same or better functionality and performance, which shall, upon acceptance by the LADWP, be considered Deliverables.

e) **Use of Funds.** Contractor certifies that it has appropriate systems and controls in place to ensure that LADWP funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

20. MAINTENANCE AND SUPPORT.

a) **RESERVED.**

b) **Software Maintenance.** Commencing with the first day after the expiration of the Software warranty described in SECTION 22 ("WARRANTIES"), and provided LADWP has paid Contractor the applicable maintenance fee then, Contractor shall immediately commence providing Software Maintenance which shall consist of those activities and services described as such in EXHIBIT J ("SOFTWARE MAINTENANCE").

c) **Failure to Provide Maintenance.** Any failure of Contractor to timely provide Maintenance hereunder shall thereupon immediately suspend any obligation of the LADWP to pay any Fees, and may, in addition and at the LADWP's option, be considered a material breach of this Agreement for purposes of SECTION 13 ("TERM AND TERMINATION").

d) **RESERVED.**

21. **Task Order Development and Approval.** During the term of this Agreement the Department shall have the right to request Task Orders within the general scope of work contemplated by this Agreement and consistent with Appendix B, Fee Schedule of Exhibit F of this Agreement.

Task Orders may be based either upon a lump sum or a time and materials basis.

a) **Task Order Proposal.** A Department Task Order proposal shall specify the following:

1. Purpose and Objective
2. Prerequisites to Consultant's performance
3. Scope of Work
4. Schedule
5. Premises (assumptions, conditions, restrictions, project location, etc.)
6. Key Consultant and subconsultant personnel required for the task
7. Applicable rate schedules
8. Method of compensation (i.e. lump sum or time and materials)
9. Department designated Task Order administrator, if different than the project manager identified in Subsection 25(e) ("Notices") of this Agreement.

b) **Task Order Development.** Within ten (10) calendar days following the Consultant's receipt of the Department's written Task Order proposal, the Consultant, at its own expense, shall prepare and deliver to the Department a written response to the Department's request evaluating the Task Order proposal for completeness, clarity, ability to perform the work and services, schedule, and proposed use of subconsultants and Consultant personnel. The Consultant may suggest to the Department that changes be made to the work and services contemplated in the Task Order proposal. The Consultant shall provide the Department with a detailed cost estimate, including identification of all required personnel, rates, and hours of effort, for the requested Task Order proposal.

In the event that subconsultants, Consultant personnel, or expenses not included in Appendix J, ("List of Proposed Subcontractors"), or Appendix B, ("Fee

Schedule”), both of Exhibit F (“Response”) of this Agreement, are required by the Consultant to complete the task, the Task Order shall specifically include such additions to the appropriate Agreement Exhibits for approval and authorization by the Department.

The Consultant shall provide a summary of overall subconsultant utilization for the Task Order and the Agreement as whole, and explain any deviations from the anticipated subconsultant participation identified in **Appendix J, (“List of Proposed Subcontractors”)** of Exhibit F (“Response”) of this Agreement, and recommendations for recovering any shortfalls in subconsultant utilization.

Upon the Department’s review of the Consultant’s written response to the Task Order proposal, the Department and Consultant shall cooperatively work to develop a Task Order. To that end, informal exchanges between the Consultant and Department Task Order administrator or project manager are encouraged to aid in the development of a Task Order.

The Department and the Consultant agree to make a good faith effort to reach a mutually agreed upon lump sum or time and materials Task Order for services based upon the Consultant labor rates established in **Appendix B, (“Fee Schedule”)** of Exhibit F (“Response”) of this Agreement. In the event that parties fail to mutually agree on the price of such Task Orders, Consultant shall be under no obligation to perform work under such Task Order.

e) Task Order Approval and Authorization.

A Task Order executed by the Department’s authorized representative(s) as identified in **Subsection 25(e) (“Notices”)** of this Agreement, or their designee established in writing, shall be delivered to the Consultant for execution, consistent with **Subsection**

25(e) (“Notices”) of this Agreement. The Task Order shall contain the full and complete agreement among the Parties regarding the work and services contemplated in the Task Order. The Department shall not be liable for payment for Consultant services, work, tasks, deliverables or costs which are performed outside an authorized Task Order.

f) Task Order Modifications. The Department or Consultant may seek modifications to an authorized Task Order to address needed services, work, tasks, deliverables, or costs associated with the task assignment or to address changed conditions. Such Task Order modifications shall be processed in accordance with the Task Order development procedures established in this **Section 21 (“Task Order Development and Approval”)**.

The Consultant shall notify the Department in writing as soon as the Consultant becomes aware that the tasks assigned in an authorized Task Order may not be able to be completed for the authorized expenditure amount. In such an event the Consultant shall propose suggested modifications to the Task Order for consideration by the Department. The Consultant agrees and acknowledges that failure to provide such notice to the Department could result in negative impacts to the Department and project completion.

22. WARRANTIES.

a) Deliverables. Contractor hereby represents and warrants that the Deliverables (including without limitation all Hardware and Software, but not including Services) shall materially conform to their corresponding Specifications (including without limitation all Documentation) in normal use for a period of thirty (30) days from the date of delivery to the LADWP. In the event of any breach of the foregoing warranty, the LADWP shall

promptly notify Contractor, and Contractor shall immediately either replace or, if commercially reasonable, repair such non-conforming Deliverables, and provide the same immediately to the LADWP. Any failure of Contractor to carry out the foregoing in a manner reasonably satisfactory to the LADWP, may, at the LADWP's option, be considered a material breach of this Agreement for purposes of SECTION 13 ("TERM AND TERMINATION").

b) Services. Contractor represents and warrants that Contractor shall perform the Services in a professional and workmanlike manner, in accordance with the best practices of Contractor's industry, and in material conformity with corresponding Specifications (including without limitation all Documentation). In the event of any breach of the foregoing warranty, the LADWP shall promptly notify Contractor, and Contractor shall immediately re-perform the non-conforming Services. Any failure of Contractor to carry out the foregoing in a manner reasonably satisfactory to the LADWP, may, at the LADWP's option, be considered a material breach of this Agreement for purposes of SECTION 13 ("TERM AND TERMINATION").

c) General. Contractor represents and warrants that: (i) Contractor has full power and authority to enter into this Agreement and the person signing the Agreement on Contractor's behalf has been duly authorized and empowered to enter into this Agreement; (ii) the Deliverables shall not contain any materials which are unlawful, defamatory, libelous, threatening, abusive, racist, vulgar, harassing, pornographic or obscene; (iii) Neither the Deliverables (including without limitation the provision of Services) nor any element thereof, infringes or shall infringe or misappropriate the intellectual property rights of any third party, including without limitation any patent, copyright, trademark or trade

secret rights; (iv) the Deliverables shall not be subject to any restrictions, including without limitation any liens, mortgages, pledges, security interests, encumbrances, or encroachments; (v) Contractor is not under, and shall not enter into any, obligation or obligations inconsistent with the provisions of this Agreement; and (vi) Contractor shall not violate any law, statute, ordinance, or regulation in the course of its performance under this Agreement.

d) Viruses. Contractor represents and warrants that it has exercised and shall exercise its most diligent efforts to ensure that no viruses, "Trojan Horses", "Worms" or other damaging, dangerous or objectionable code (collectively, "Viruses") are included with the Deliverables. If at any time a Virus may be found to exist in or have emanated from the Deliverables, or any electronic data, information or report generated thereby, Contractor agrees, at its sole expense, to exercise its most diligent efforts (including but not limited to providing appropriate replacement products, software, installation, and diagnostic testing) to remove such Virus within five (5) days of LADWP's notice.

e) Disclaimer. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ANY AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED AND NEGATED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In no event shall Contractor be responsible for incidental, consequential, indirect, special, exemplary or punitive damages unless caused by the willful misconduct of Contractor. If any Work is found not to conform to the specifications, Contractor shall, at its option, either refund that portion of Contractor's fees pertaining to

such non-conforming work or repair or replace the defective Work at no cost to the Department. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR HAS ANY AUTHORITY TO MAKE OR BIND CONTRACTOR TO ANY REPRESENTATIONS OR WARRANTY CONCERNING THE SERVICES FURNISHED UNDER THIS AGREEMENT AND ANY SUCH ORAL OR WRITTEN REPRESENTATION OR WARRANTY NOT EXPRESSLY SET FORTH IN THIS AGREEMENT SHALL NOT BE ENFORCEABLE. CONTRACTOR DOES NOT WARRANT THAT THE SERVICES WILL ENSURE THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE OF UNINTERRUPTED. Furthermore, the total cumulative liability of Contractor and its subcontractors and suppliers arising from the performance or a failure to perform work pursuant to this Agreement, whether in tort, contract, or strict liability, or otherwise including all expenses incurred or payable by Contractor in satisfaction of its obligations under this Agreement, shall not exceed the total fees paid to Contractor under this Agreement.

23. LIMITATION OF LIABILITY. IN NO EVENT SHALL THE TOTAL LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT EXCEED THE HIGHER OF ONE MILLION DOLLARS (\$1,000,000) OR THE TOTAL AGREEMENT PRICE, REGARDLESS OF THE CAUSE OF ACTION, IN TORT, CONTRACT OR OTHERWISE.

24. SURVIVAL AND ORDER OF PRECEDENCE. In the event of any expiration or termination of this Agreement, the provisions of Section 1 ("Definitions"), Subsection 3(b) ("No Obligation"), Section 13 ("Term and Termination"), Section 16 ("Records and Audit"), Section 17 ("Rights in Work Product and Licenses"), Section 18

("Confidential Information and Source Code Escrow"), Section 19 ("Intellectual Property and Deliverables Indemnity"), Section 22 ("Warranties"), Section 23 ("Limitation of Liability"), Section 24 ("Survival and Order of Precedence"), and Section 25 ("General") shall survive and shall continue to bind the parties. In the event of any conflict between the terms of this Agreement and the terms of any exhibit, the terms of the exhibit shall control. In the event of any conflict between the following documents, all of which are hereby incorporated by reference into this Agreement, the order of precedence shall be as follows:

- a. Latest Change Order
- b. Task Assignment
- c. Agreement
- d. Other referenced documents
- e. Response

25. GENERAL.

a) Governing Law. This Agreement shall be governed in all respects by the laws of the United States of America and the State of California without regard to conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

b) Attorneys' Fees. In the event any proceeding or lawsuit is brought by the LADWP or Contractor in connection with this Agreement, each party shall bear its own attorneys' fees and costs.

c) Forum. Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the City of Los Angeles. The State and Federal Courts located in the City of Los Angeles shall have exclusive jurisdiction over any disputes under this

Agreement, and the parties hereby submit to the personal jurisdiction of such courts.

d) Injunctive Relief. It is understood and agreed that, notwithstanding any other provisions of this Agreement, breach of the provisions of this Agreement by Contractor will cause the LADWP irreparable damage for which recovery of money damages would be inadequate, and that the LADWP shall therefore be entitled to obtain timely injunctive relief to protect the LADWP's rights under this Agreement in addition to any and all remedies available at law.

e) Notices. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery or five (5) days after deposit in the mail. Any such notice or report directed to the LADWP shall be delivered to:

LOS ANGELES DEPARTMENT OF WATER AND POWER

John Litwin
Contract Administrator
111 North Hope Street, Room 851
Los Angeles, California 90012-2694

With a Copy To:

Chief Assistant City Attorney
111 North Hope Street
Los Angeles, California 90012-2694

Any such notice or report directed to the Contractor shall be delivered to:

Michael W. Groves, Jr.
Osmose Utilities Services, Inc.
215 Greencastle Road
Tyrone, GA 30290

Either party, by written notice, may designate different or additional person(s) or different addresses.

f) Agency. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

g) Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

h) Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

i) Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.

j) Assignment. Neither this Agreement nor any rights or obligations of Contractor hereunder may be assigned by Contractor in whole or in part without the prior written approval of the LADWP. Such approval may be withheld for any reason or no reason as this Agreement is a personal services contract and was awarded to Contractor based on the qualities of Contractor. For the purposes of this Subsection 25(j) ("Assignment"), a

change in the persons or entities who control fifty percent (50%) or more of the equity securities or voting interest of Contractor shall be considered an assignment of Contractor's rights and obligations. The LADWP's rights and obligations, in whole or in part, under this Agreement may be assigned by the LADWP. The LADWP may exercise full transfer and assignment rights in any manner at the LADWP's discretion.

k) Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

l) Relationship of the Parties. The Contractor is acting hereunder as an independent Contractor and not as an agent or employee of the LADWP. 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 LADWP.

m) Entire Agreement. This Agreement together with the Exhibits hereto completely and exclusively states the agreement of the parties regarding its subject matter. This Agreement supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. The terms of any Shrink-Wrap Agreement accompanying any Software delivered to the LADWP hereunder shall, to the extent inconsistent with the terms of this Agreement, have no effect whatsoever. This Agreement shall not be modified except by a subsequently dated written amendment or exhibit signed on behalf of the LADWP and Contractor by their duly authorized representatives. Any purported oral amendment to this Agreement shall have no effect.

AGREED TO:

Los Angeles Department of Water and Power

By: _____

Title: _____

Date: _____

[Contractor Name] Osmose Utilities Services, Inc.

By:  _____

Michael W. Groves, Jr.

Title: Vice President-Contracts

Date: December 2, 2014

APPROVED AS TO FORM AND LEGALITY
MICHAEL N. BERGER, CITY ATTORNEY
DEC 05 2014
BY _____
DIRWP, BERGER/MA
DEPUTY CITY ATTORNEY

**EXHIBIT A
STATEMENT OF WORK**

A.1 Hardware

Section not included; does not pertain to this agreement.

A.2 Software

For Standard Support Services Provided for Software Maintenance, please refer to Section J.1.1 Standard Software Maintenance Services of Exhibit J.

A.3 Fees Schedule

A.3.1 Standard Software Maintenance Services

See description of services in Exhibit J and software maintenance schedule in Section J.2 of Exhibit J.

A.3.2 Escrow Services

See description of services in Exhibit J and software maintenance schedule in Section J.2 of Exhibit J, and Exhibit C ("Escrow Agreement").

A.4 Proprietary New Software and Upgrades Tasks

Under this Maintenance Program, Osmose will provide Proprietary New Software and Upgrades Tasks.

**** The FastGate software proposed for this contract is based on proprietary technology and is wholly owned, developed and maintained by Osmose, Inc.**

The Proprietary New Software and Upgrades Tasks will entail tasks such as those identified in the following list of services.

1. **FastGate Gateway Software Upgrades** – includes periodic maintenance of FastGate related adaptations; performance tuning of system, and implementation of business process enhancements.
2. **Interfacing of FastGate Gateway to External Computer Systems** – related with interfacing to M3i Outage Management System, Intergraph FRAMME/GIS,ECS Historia Gateway, and SCADA/Energy Management System, as a result of FastGate software upgrades or minor revisions to External Computer Systems.
3. **FastGate Gateway Train the Trainer Services** – as due to software upgrades, enhancements and business process improvements.
4. **Production Tasks** – as needed.

The Proprietary New Software and Upgrades Tasks will be requested by the Department through the Contract Administrator under the Agreement will be performed in accordance with a task management system. Accordingly, prior to any Department request to Osmose for Proprietary New Software and Upgrades Tasks under the Agreement, the Department will prepare a written

document called a "Task Assignment".

A separate Task Assignment proposal will be prepared for each Task Assignment and will include, but not limited to, the following information:

1. Task number;
2. Task name or title;
3. Purpose and objective of the Task assignment;
4. Prerequisites to Osmose's performance;
5. Scope of the work to be performed;
6. Results of work expected;
7. Premises (assumptions, benefits envisioned, conditions, or restrictions);
8. Key Task Assignment management personnel;
9. Schedule, including expected progress reports and transmission of interim results;
10. Mutually established fixed cost to be paid to Osmose to perform the Task Assignment, and performance completion/payment schedules; or "time and material" rates applicable in accordance herewith and an estimate of total "time and material" fees; and
11. Name of the Department's authorized representative

The provisions of this Agreement shall be deemed incorporated into all Task Assignments entered into between the parties.

A.4.1 Task Modification

Upon receipt of a proposed Task Assignment from the Department, Osmose will evaluate said proposed Task Assignment for completeness, understandability, its ability to perform, and other factors in Osmose's discretion. Any request by Osmose to change or modify the proposed Task Assignment shall be transmitted in writing to the Contract Administrator. The Contract Administrator and Osmose shall enter into good faith negotiations to agree upon and sign the final Task Assignment. The Task Assignment will include the amount and method of compensation and maximum expenditure for the task assigned therein. Once agreed to and signed by the parties, no modification or alteration in said Task Assignment is permitted without prior modification of the existing Task Assignment, in writing, by the Contract Administrator and an authorized Osmose representative.

In the event that the parties fail to agree on such modifications, Osmose shall be under no obligation to perform work under such Task Assignment.

A.4.2 Task Assignment

Any Proprietary New Software and Upgrades Tasks which is not provided for in the approved Task Assignment or work which would require additional charges shall not be performed without prior modification of the existing Task Assignment, in writing, by the Contract Administrator.

A.4.3 Task Compensation

Proprietary Maintenance Tasks may be performed on a time-and materials basis, including a maximum amount established for a Task Assignment, on a fixed-price basis, or any combination thereof. The particular method of compensation for each Task Assignment will be agreed upon by the parties during negotiations relating to the Task Assignment.

Every Task Assignment shall clearly state the method of compensation, i.e., time-and-materials, or fixed-price, or combination thereof, used for the particular Task Assignment. In the event payments by LADWP are to be made prior to completion of the Task Assignment, the Task Assignment shall contain a performance schedule; and following performance in accordance with such schedule, as previously approved by the parties, interim payments shall be approved by the Contract Administrator and made to Osmose.

A.4.4 Time and Material Basis

LADWP will pay for time-and-materials based task services at the rates established under "Osmose Professional Tasks Resources Rates" hereto. In any one validity period the rates will not be increased by a percentage greater than the percentage increase the Consumer Price Index. Complete payment for any Task Assignment made on a time-and-materials basis will be limited by the maximum amount established in the Task Assignment.

Rates contained under "Osmose Professional Tasks Resources Rates" are valid through December 31st, 2015. Rates for subsequent one-year validity periods will be supplied in writing to LADWP at the start of each new validity period.

The rates shown may be increased at the start of each new validity period, with LADWP's approval, by a percentage not greater than the percentage increase in the Consumer Price Index, as recorded in the Federal Register, for the 12-month period prior to the increase. Notwithstanding the foregoing, such rates may be increased by a percentage greater than the Consumer Price Index where Osmose can reasonably demonstrate that certain expense items have increased more significantly than the Consumer Price Index.

A.4.5 Reimbursement of Travel Expenses

Travel expenses necessary to perform required work for the Department pursuant to an authorized Task Order must be pre-approved by the Department. Department approved travel expenses shall be paid by the Department at the actual cost of such expenses, consistent with **Exhibit O**, Allowable Travel and Living Expenses, which is attached hereto and made a part hereof. No markup by the Consultant or subconsultant of any tier for travel expenses shall be allowed.

A.4.6 Osmose Professional Tasks Resources Rates

Description	Hourly Rate	Travel Rate	Overtime Rate
Senior Project Manager	\$246	\$ 123	\$309
Project Manager	\$ 199	\$ 100	\$250
Senior Programmer	\$ 176	\$ 88	\$221

Programmer	\$ 153	\$76	\$ 191
Production Technician	\$ 129	\$65	\$ 162

- o All rates are in US dollars.
- o Notwithstanding the rate structure above, Osmose and LADWP can agree on different rates for specific resources.
- o These rates are going to be used exclusively for Time and Material basis type of work. o All taxes are excluded from this table.
- o This table assumes that the work is performed on-site and LADWP is providing the resources with necessary workspace, tools and amenities including a computer workstation to carry on their mandate.
- o Rates are valid until December 31, 2015 and can vary from year to year in accordance with Exhibit A.4
Section A.4.4. In any one validity period the rates will not increase by a percentage greater than four percent (4%) per year.

EXHIBIT B
GOVERNMENT AND INSURANCE TERMS

I. Business Policies.

1.1 Los Angeles Department of Water and Power's Recycling Policy.

A. The LADWP supports the use of recycled-content products of all types. Recycled-content products help conserve natural resources, including water and energy, and reduce demands upon landfills.

B. The Contractor shall submit all written documents on paper with a minimum of 30 percent post-consumer recycled content. Existing company/corporate letterhead/stationery that accompanies these documents is exempt from this requirement. Documents of two or more pages in length shall be duplex-copied (double-sided pages). Neon or fluorescent paper shall not be used in any written documents submitted to the LADWP.

1.2 Non Discrimination/Equal Employment Practices/Affirmative. Action

Non Discrimination and Equal Employment Practices

The Contractor shall not discriminate in employment practices against any employee or applicant for employment because of race, religion, national origin, sex, age, or physical handicap. The Consultant shall comply with the terms of the "Non-Discrimination and Equal Employment Practices" (2 pages) affidavit in **Appendix D ("Non-Discrimination and Equal Employment Practices")** of **Exhibit F ("Response")** of this Agreement.

Affirmative Action Plan

The Consultant shall have an Affirmative Action Plan on file with the Director of Supply Chain Services. The Consultant shall comply with the requirements of the City of Los Angeles and shall comply with the terms of the "Affirmative Action Plan" (3 pages) affidavit in **Appendix M ("Affirmative Action Plan")** of **Exhibit F ("Response")** of this Agreement.

An Affirmative Action Plan shall be in effect and on file with the Department for the duration of the contract period.

1.3 Small Business Enterprise (SBE) Participation Program

Consultant agrees and obligates itself to utilize the services of SBEs, Emerging Business Enterprises (EBEs), Women-Owned Business Enterprises (WBEs), Minority-Owned Business Enterprises (MBEs), Disabled Veteran-Owned Business Enterprises (DVBES), Disadvantaged Business Enterprises (DBEs), and Other Business Enterprises (OBEs) firms on a level so designated in this Agreement, if any. Consultant shall not change any of these designated subconsultants nor shall Consultant reduce their level of effort,

without prior written approval of the Department, provided such approval shall not be unreasonably withheld, in accordance with the Department's Small Business Enterprise (SBE) Participation Program.

1.4 Other Business Policies

Contractor shall comply with **all** government terms:

- Business Tax Registration Certificate/Vendor Registration Number
- Taxpayer Identification Number
- Equal Benefits Ordinance
- Contractor's Responsibility Ordinance
- Municipal Lobbying Ordinance (CEC Form 50)
- Prohibited Contributors (CEC Form 55)
- Iran Contracting Act 2010

1.5 Service Contract Worker Retention And Living Wage Policy.

A. General Provisions. This contract is subject to the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et. seq., and the Living Wage Ordinance (LWO), Section 10.37 et. seq., of the Los Angeles Administrative Code. The Ordinances require that, unless specific exemptions apply, employers who are awarded service contracts that involve expenditures in excess of \$25,000, and have a duration of at least three months; and any persons who receive City financial assistance of one million dollars or more in any 12-month period, shall comply with the following provisions of the ordinances: (Retention for a 90-day transition period, the employees who were employed for the preceding 12 months or more by the terminated Contractor or subcontractor, if any, as provided for in the SCWRO; Payment of a minimum initial wage rate to employees as defined in the LWO, of \$8.27 per hour, with health benefits of at least \$1.25 per hour, or otherwise \$9.52 per hour without benefits.

B. Termination Provisions. Under the provisions of Section 10.36.3(c) and Section 10.37.5 (c) of the Los Angeles Administrative Code, the LADWP of Water and Power, shall have the authority, under appropriate circumstances, to terminate this contract and otherwise pursue legal remedies that may be available, if the LADWP of Water and Power determines that the subject Contractor or financial assistance recipient violated the provisions of the referenced Code Section.

C. Invoice Provisions. All invoices related to SCWRO and LWO Contracts shall contain the following statement: "The Contractor fully complies with Section 10.36

et. and Section 10.37 et . seq., SCWRO and LWO, respectively, of the Los Angeles Administrative Code.”

1.6 Child Support Policy. The Contractor and any Subcontractor(s) must fully comply with all applicable State and Federal employment reporting requirements for the Contractor's and any Subcontractor(s)' employees. The Contractor and any Subcontractor(s) must fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code. The Contractor and any Subcontractor(s) must certify that the principal owner(s) thereof (any person who owns an interest of 10 percent or more) are in compliance with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally. The Contractor and any Subcontractor(s) must certify that such compliance will be maintained throughout the term of the Contract. Failure of the Contractor and/or any Subcontractor(s) to fully comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owner(s) to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a default under the Contract. Failure of the Contractor and/or any Subcontractor(s) or principal owner(s) thereof to cure the default within 90 days of notice of such default by the City shall subject the Agreement to termination.

2. Insurance Requirements.

2.1 Insurance

It is the policy of Los Angeles Department of Water and Power (LADWP) that upon the award of a contract, the selected Bidder/Bidder/Tenant must provide evidence of insurance that conforms to the insurance requirements of the bid/proposal/agreement. Insurance requirements are explained in detail in the attached language and "Contract Insurance Requirements" sheet, which specifically outlines the types and amounts of coverage required for this project/tenancy.

When and if you are awarded a contract/agreement, acceptable evidence of required insurance, from insurers acceptable to the LADWP, will be required to be submitted within 30-days of the date of award and maintained current throughout the term of the contract. Said evidence of insurance must be on file with the Risk Management Section in order to receive payment under any contract for services rendered, and in order to commence work/tenancy under your contract.

For further information regarding these requirements, please contact:

Los Angeles Department of Water and Power
Risk Management Section
Phone: (213) 367-4674
Fax: (213) 367-0214
Web: <http://www.ladwp.com/ladwp/cms/ladwp005363.jsp>

2.2 Additional Insured Status Required

Contractor/Vendor shall procure at its own expense, and keep in effect at all times during the term of this Agreement, the types and amounts of insurance specified on the attached Contract Insurance Requirements page. The specified insurance shall also, either by

provisions in the policies, by City's own endorsement form or by other endorsement attached to such policies, include and insure City, its Department of Water and Power, its Board of Commissioners (hereinafter referred to as "Board"), and all of its officers, employees and agents, their successors and assigns, as Additional Insured (except for Professional Liability and Workers' Compensation), against the area of risk described herein as respects Contractor's/Vendor's acts or omissions in its performance of the agreement, hereunder or other related functions performed by or on behalf of Contractor/Vendor. Such insurance shall not limit or qualify the liabilities and obligations of the Contractor/Vendor assumed under the contract.

2.3 Severability of Interests and Cross Liability Required

Each specified insurance policy (other than Workers' Compensation and Employers' Liability and Property coverages) shall contain a Severability of Interest and Cross Liability clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a Contractual Liability Endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Agreement with the City of Los Angeles."

2.4 Primary and Non-Contributory Insurance Required

All such insurance shall be Primary and Noncontributing with any other insurance held by City's Department where liability arises out of or results from the acts or omissions of Contractor/Vendor, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Contractor/Vendor. Any insurance carried by the LADWP which may be applicable shall be deemed to be excess insurance and the Contractor's/Vendor's insurance is primary for all purposes despite any conflicting provision in the Contractor's/Vendor's policies to the contrary.

2.5 Proof of Insurance for Renewal or Extension Required

At least ten (10) days after the expiration date of any of the policies required on the attached Contract Requirement page, documentation showing that the insurance coverage has been renewed or extended shall be filed with the LADWP. If such coverage is canceled or reduced in coverage, Contractor/Vendor shall, within fifteen (15) days of such cancellation or reduction of coverage, file with the LADWP evidence that the required insurance has been reinstated or provided through another insurance company or companies.

2.6 Submission of Acceptable Proof of Insurance and Notice of Cancellation

Contractor shall provide proof to the LADWP's Risk Manager of all specified insurance and related requirements either by use of LADWP's own endorsement form(s) or by other written evidence of insurance acceptable to the Risk Manager, but always in a form acceptable to the Risk Manager and the Office of the City Attorney. The documents evidencing all specified coverages shall be filed with the LADWP prior to Contractor beginning operations hereunder. Said proof shall contain at a minimum, the applicable policy number, the inclusive dates of policy coverages, the date the protection begins for the Department of Water and Power, and the insurance carrier's name. It shall provide that such insurance shall not be subject to cancellation, material reduction in coverage or non-renewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) calendar days prior to the effective date thereof. The notification shall be sent by registered mail to: The Office of

the City Attorney, Water and Power Division, Post Office Box 51111, JFB Room 340, Los Angeles, California 90051-0100.

2.7 Claims-Made Insurance Conditions

Should any portion of the required insurance be on a "Claims Made" policy, the Contractor/Vendor shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended three (3) years discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

2.8 Failure to Maintain and Provide as Cause for Termination

Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which the LADWP may immediately terminate or suspend the agreement.

2.9 Sub-Contractor Compliance

The Contractor/Vendor shall be responsible for all sub-contractors'/sub-vendors' compliance with the insurance requirements.

2.10 Specific Insurance Requirements

The Bidder shall confirm to the requirements listed in the "Contract Insurance Requirements" sheet per Exhibit L.

2.11 Indemnification

The Contractor undertakes and agrees to indemnify and hold harmless the City of Los Angeles, the Department of Water and Power, the Board of Water and Power Commissioners of the City of Los Angeles, and all of their officers and employees, and, at the option of the LADWP, defend the LADWP, and any and all of their Boards, officers, agents, representatives, employees, assigns and successors in interest from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including contractor's employees and agents, or damage or destruction to any property of either party hereto, or third persons in any manner arising by reason of the active negligence or willful misconduct incident to the performance of this contract on the part of the Contractor, or the Contractor's officers, agents, employees, or subcontractors of any tier while on LADWP property, except for the active negligence or willful misconduct of the LADWP, its Board, officers, agents, representatives or employees. If the event of the joint and or concurrent negligence of Contractor and LADWP the parties shall agree on an equitable allocation of any such costs. This indemnification shall survive for a period of one year after termination of this Agreement.

EXHIBIT C
ESCROW AGREEMENT

Exhibit C ESCROW AGREEMENT

MASTER PREFERRED ESCROW AGREEMENT

Master Number 8269 - 00001

This agreement "Agreement" is effective _____, 20____ among DSI Technology Escrow Services, Inc. ("DSI"), Calient Networks, Inc. ("Depositor") and any additional party signing the Acceptance Form attached to this Agreement ("Preferred Beneficiary"), who collectively may be referred to in this Agreement as the parties ("Parties").

A. Depositor and Preferred Beneficiary have entered or will enter into a license agreement, development agreement, and/or other agreements regarding certain proprietary technology of Depositor (referred to in this Agreement as "the License Agreement").

B. Depositor desires to avoid disclosure of its proprietary technology except under certain limited circumstances.

C. The availability of the proprietary technology of Depositor is critical to Preferred Beneficiary in the conduct of its business and, therefore, Preferred Beneficiary needs access to the proprietary technology under certain limited circumstances.

D. Depositor and Preferred Beneficiary desire to establish an escrow with DSI to provide for the retention, administration and controlled access of certain proprietary technology materials of Depositor.

E. The parties desire this Agreement to be supplementary to the License Agreement pursuant to 11 United States [Bankruptcy] Code, Section 365(n).

ARTICLE I -- DEPOSITS

1.1 Obligation to Make Deposit. Upon the signing of this Agreement by the parties, including the signing of the Acceptance Form, and Exhibit D naming the Deposit Account, Depositor shall deliver to DSI the proprietary technology and other materials ("Deposit Materials") required to be deposited by the License Agreement or, if the License Agreement does not identify the materials to be deposited with DSI, then such materials will be identified on Exhibit A. If Exhibit A is applicable, it is to be prepared and signed by Depositor and Preferred Beneficiary. DSI shall have no obligation with respect to the preparation, signing or delivery of Exhibit A.

1.2 Identification of Tangible Media. Prior to the delivery of the Deposit Materials to DSI,

Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Deposit Materials are written or stored. Additionally, Depositor shall complete Exhibit B to this Agreement by listing each such tangible media by the item label description, the type of media and the quantity. Exhibit B shall be signed by Depositor and delivered to DSI with the Deposit Materials. Unless and until Depositor makes the initial deposit with DSI, DSI shall have no obligation with respect to this Agreement, except the obligation to notify the parties regarding the status of the account as required in Section 2.2

below:

1.3. Deposit Account Name Identification. Subject to this Section 1, and at the time Depositor makes the initial deposit with DSI in accordance with Section 1.2 above, Depositor shall complete and sign Exhibit D naming the initial account upon which the Deposit Materials are written or stored. Any new deposits referencing new account names made subsequent to the signing of this Agreement, intended by the Depositor to be held in a separate account and maintained separately from the initial account, but made a part of this Agreement, shall be provided for by the Depositor on Exhibit E, and Exhibit E shall be signed by the Depositor and DSI.

1.4. Acceptance of Deposit. When DSI receives the Deposit Materials, DSI will conduct a deposit inspection. At completion of the deposit inspection, if DSI determines that the labeling of the tangible media matches the item descriptions and quantity on Exhibit B, DSI will date and sign Exhibit B and mail a copy thereof to Depositor and Preferred Beneficiary. If DSI determines that the labeling does not match the item descriptions or quantity on Exhibit B, DSI will (a) note the discrepancies in writing on Exhibit B; (b) date and sign Exhibit B with the exceptions noted; and (c) mail a copy of Exhibit B to Depositor and Preferred Beneficiary. DSI's acceptance of the deposit occurs upon the signing of Exhibit B by DSI. Delivery of the signed Exhibit B to Preferred Beneficiary is Preferred Beneficiary's notice that the Deposit Materials have been received and accepted by DSI. Other than DSI's inspection of the Deposit Materials, DSI shall have no obligation to the accuracy, completeness, functionality, performance or non-performance of the Deposit Materials.

1.5. Depositor's Representations. Depositor represents as follows:

- a. Depositor lawfully possesses all of the Deposit Materials deposited with DSI;
- b. With respect to all of the Deposit Materials, Depositor has the right and authority to grant to DSI and Preferred Beneficiary the rights as provided in this Agreement;
- c. As of the effective date of this Agreement, the Deposit Materials are not the subject of a lien or encumbrances, however, any liens or encumbrances made after the execution of this Agreement will not prohibit, limit, or alter the rights and obligations of DSI under this Agreement;
- d. The Deposit Materials consist of the proprietary technology and other materials identified either in the License Agreement or Exhibit A, as the case may be; and
- e. The Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials is encrypted, the decryption tools and decryption keys have also been deposited.

1.6. Verification. Upon receipt of a written request from Preferred Beneficiary, DSI and Preferred Beneficiary may enter into a separate proposal agreement pursuant to which DSI will agree, upon certain terms and conditions, to inspect the Deposit Materials for the purpose of verifying its accuracy, completeness, sufficiency and quality ("Verification Proposal

Agreement²⁾. Depositor shall reasonably cooperate with DSI by providing its facilities, computer software systems, and technical and support personnel for verification whenever reasonably necessary. If a verification is elected after the Deposit Materials have been delivered to DSI, then only DSI, or at DSI's election, an independent contractor or company selected by DSI, may perform the verification.

1.7 Deposit Updates. Unless otherwise provided by the License Agreement, Depositor shall update the Deposit Materials within sixty (60) days of each release of a new version of the product, which is subject to the License Agreement. Such updates will be added to the existing deposit. All deposit updates shall be listed on a new Exhibit B and the new Exhibit B shall be signed by Depositor. Each Exhibit B will be held and maintained separately within the escrow account. An independent record will be created which will document the activity for each Exhibit B. The processing of all deposit updates shall be in accordance with Sections 1.2 through 1.6 above. All references in this Agreement to the Deposit Materials shall include the initial Deposit Materials and any updates.

1.8 Removal of Deposit Materials. The Deposit Materials may be removed and/or exchanged only on written instructions signed by Depositor and Preferred Beneficiary, or as otherwise provided in this Agreement.

ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING

2.1 Confidentiality. DSI shall have the obligation to reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Agreement or any subsequent agreement between the Parties, DSI shall not disclose, transfer, make available, or use the Deposit Materials. DSI shall not disclose the terms of this Agreement to any third party. If DSI receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, DSI will immediately notify the parties to this Agreement unless prohibited by law. It shall be the responsibility of Depositor and/or Preferred Beneficiary to challenge any such order; provided, however, that DSI does not waive its rights to present its position with respect to any such order. DSI will not be required to disobey any order from a court or other judicial tribunal including, but not limited to, notices delivered pursuant to 7.6 below.

2.2 Status Reports. DSI will issue to Depositor and Preferred Beneficiary a report profiling the account history semi-annually.

ARTICLE 3 -- RIGHT TO MAKE COPIES

3.1 Right to Make Copies. DSI shall have the right to make copies of the Deposit Materials as reasonably necessary to perform this Agreement. DSI shall copy all copyright, nondisclosure, and other proprietary notices and files contained on the Deposit Materials and any copies made by DSI. With all Deposit Materials submitted to DSI, Depositor shall provide any and all instructions as may be necessary to duplicate the Deposit Materials including but not limited to the hardware and/or software needed. Any copying expenses incurred by DSI as a result of a request to copy will be borne by the party requesting the copies. Alternatively, DSI may notify

Depositor requiring its reasonable cooperation in promptly copying the Deposit Materials in order for DSI to perform this Agreement.

ARTICLE 4 -- RELEASE OF DEPOSIT

4.1 Release Conditions. As used in this Agreement, "Release Conditions" shall mean the conditions for release of the Deposit Materials set forth in the License Agreement entered into by the Depositor and the Preferred Beneficiary.

4.2 Filing For Release. If Preferred Beneficiary believes in good faith that a Release Condition has occurred, Preferred Beneficiary may provide to DSI written notice of the occurrence of the Release Condition and a request for the release of the Deposit Materials. Within five (5) business days of receipt of a written notice, DSI shall provide a copy of the notice to Depositor. DSI will promptly notify the Parties unless DSI acknowledges or discovers independently, or through the Parties, its need for additional documentation or information in order to comply with this section. Such need for additional documentation or information may extend the time period for DSI's performance under this section.

4.3 Contrary Instructions. From the date DSI mails the notice requesting release of the Deposit Materials, Depositor shall have ten (10) business days to deliver to DSI contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured. Upon receipt of Contrary Instructions, DSI shall send a copy to Preferred Beneficiary by commercial express mail. Additionally, DSI shall notify both Depositor and Preferred Beneficiary that there is a dispute to be resolved pursuant to the Section 7.4. Subject to Section 5.2 of this Agreement, DSI will continue to store the Deposit Materials without release pending (a) joint instructions from Depositor and Preferred Beneficiary; (b) dispute resolution pursuant to Section 7.4; or (c) order from a court of competent jurisdiction.

4.4 Release of Deposit. If DSI does not receive Contrary Instructions from the Depositor, DSI is authorized to release the Deposit Materials to the Preferred Beneficiary or, if more than one beneficiary is registered to the deposit, to release a copy of the Deposit Materials to the Preferred Beneficiary. However, DSI is entitled to receive any fees due DSI before making the release. Any copying expenses will be chargeable to Preferred Beneficiary. Upon any such release, the escrow arrangement will terminate as it relates to the Depositor and Preferred Beneficiary involved in the release.

4.5 Right to Use Following Release. Unless otherwise provided in the License Agreement, upon release of the Deposit Materials in accordance with this Article 4, Preferred Beneficiary shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to Preferred Beneficiary by the License Agreement. Preferred Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials.

ARTICLE 5 -- TERM AND TERMINATION

5.1 Term of Agreement. The initial term of this Agreement is for a period of one (1) year. Thereafter, this Agreement shall automatically renew from year-to-year unless (a) Depositor and Preferred Beneficiary jointly instruct DSI in writing that the Agreement is terminated; (b) DSI instructs Depositor and Preferred Beneficiary in writing ninety (90) days after its renewal date that the Agreement is terminated for nonpayment in accordance with Section 5.2; or (c) DSI reserves the right to terminate this Agreement, for any reason, other than nonpayment, by providing Depositor and Preferred Beneficiary sixty (60) days written notice of its intent to terminate this Agreement. If the Deposit Materials are subject to another escrow agreement with DSI, DSI reserves the right, after the initial one year term, to adjust the anniversary date of the Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2 Termination for Nonpayment. In the event of the nonpayment of fees owed to DSI, DSI shall provide written notice of delinquency to the parties to this Agreement affected by such delinquency. Any such party shall have the right to make the payments to DSI to cure the default. If the past due payment is not received in full by DSI within one (1) month of the date of such notice, then at any time thereafter DSI shall have the right to terminate this Agreement to the extent it relates to the delinquent party by sending written notice of termination to such affected parties. DSI shall have no obligation to take any action under this Agreement so long as any payment due to DSI remains unpaid.

5.3 Disposition of Deposit Materials Upon Termination. Subject to the foregoing termination provisions, and upon termination of this Agreement, DSI shall destroy, return, or otherwise deliver the Deposit Materials in accordance with Depositor's instructions. If there are no instructions, DSI may, at its sole discretion, destroy the Deposit Materials or return them to Depositor. DSI shall have no obligation to destroy or return the Deposit Materials if the Deposit Materials are subject to another escrow agreement with DSI or have been released to the Preferred Beneficiary in accordance with Section 4.4.

5.4 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. Depositor's Representations (Section 1.5);
- b. The obligations of confidentiality with respect to the Deposit Materials;
- c. The obligation to pay DSI any fees and expenses due;
- d. The provisions of Article 7; and
- e. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

ARTICLE 6 -- DSI'S FEES

6.1 Fee Schedule. DSI is entitled to be paid its standard fees and expenses applicable to the services provided. DSI shall notify the party responsible for payment of DSI's fees at least sixty

(six) days prior to any increase in fees. For any service not listed on DSI's standard fee schedule, DSI will provide a quote prior to rendering the service, if requested.

6.2 Payment Terms. DSI shall not be required to perform any service, including release of any Deposit Materials under Article 4, unless the payment for such service and any outstanding balances owed to DSI are paid in full. Fees are due upon receipt of a signed contract or receipt of the Deposit Materials whichever is earliest. If invoiced fees are not paid, DSI may terminate this Agreement in accordance with Section 5.2.

ARTICLE 7 -- LIABILITY AND DISPUTES

7.1 Right to Rely on Instructions. DSI may act in reliance upon any instruction, instruction, or signature reasonably believed by DSI to be genuine. DSI may assume that any employee of a party to this Agreement who gives any written notice, request, or instruction has the authority to do so. DSI will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. DSI shall not be responsible for failure to act as a result of causes beyond the reasonable control of DSI.

7.2 Indemnification. Depositor and Preferred Beneficiary each agree to indemnify, defend and hold harmless DSI from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by DSI relating in any way to this escrow arrangement except where it is adjudged that DSI acted with gross negligence or willful misconduct.

7.3 Limitation of Liability. In no event will DSI be liable for any incidental, indirect, special, exemplary, punitive or consequential damages, including, but not limited to, damages (including loss of data, revenue, and/or profits) costs or expenses (including legal fees and expenses), whether foreseeable or unforeseeable, that may arise out of or in connection with this Agreement, and in no event shall the collective liability of DSI exceed the annual escrow fees paid under this Agreement.

7.4 Dispute Resolution. Any dispute relating to or arising from this Agreement shall be submitted to, and settled by arbitration by a single arbitrator chosen by the San Diego Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall apply California law. Unless otherwise agreed by Depositor and Preferred Beneficiary, arbitrations will take place in San Diego, California, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address. If, however, Depositor and/or Preferred Beneficiary refuses to submit to arbitration, the matter shall not be submitted to arbitration and DSI may submit the matter to any court of competent jurisdiction. Any costs of arbitration incurred by DSI, including reasonable attorney's fees and costs, shall be divided equally and paid by Depositor and Preferred Beneficiary.

7.5 Governing Law. This Agreement is to be governed and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions.

7.6 Notice of Requested Order. If any party intends to obtain an order from the arbitrator or any court of competent jurisdiction, which may direct DSI to take, or refrain from taking any action, that party shall:

- a. Give DSI at least five (5) business days prior notice of the hearing;
- b. Include in any such order that, as a precondition to DSI's obligation, DSI be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and
- c. Ensure that DSI not be required to deliver the original (as opposed to a copy) of the Deposit Materials if DSI may need to retain the original in its possession to fulfill any of its other escrow duties.

ARTICLE 8 -- GENERAL PROVISIONS

8.1 Entire Agreement. This Agreement, which includes the Acceptance Form and Exhibits A, B, C, D and E described herein, embodies the entire understanding among all of the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. DSI is not a party to the License Agreement between Depositor and Preferred Beneficiary and has no knowledge of any of the terms or provisions of any such License Agreement. DSI's only obligations to Depositor or Preferred Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the parties hereto, except that Exhibit A need not be signed by DSI. Exhibit B need not be signed by Preferred Beneficiary, Exhibit C need not be signed by any party, Exhibit D need not be signed by Preferred Beneficiary or DSI and the Acceptance Form need only be signed by the parties identified therein.

8.2 Notices. All notices, invoices, payments, deposits and other documents and communications shall be given to the parties at the addresses specified in the attached Exhibit C and Acceptance Form. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties. Any correctly addressed notice or last known address of the other parties that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified as provided herein shall be deemed effective as of the first date that such notice was refused, unclaimed, or deemed undeliverable by the postal authorities by mail, through messenger or commercial express delivery services. Unless otherwise provided in this Agreement, all documents and communications may be delivered by First Class mail.

8.3 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.4 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. However, DSI shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Preferred Beneficiary unless DSI receives clear, authoritative and conclusive written evidence of the change of parties.

8.5 Waiver. Any term of this Agreement may be waived by the party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

8.6 Regulations. Depositor and Preferred Beneficiary are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with the provisions of this Agreement.

8.7 Attorney's Fees. In any litigation or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks declaration of any rights or obligations under this Agreement, the prevailing party who has proven in court by court decree, judgment or arbitrator's decision that the other party has materially breached its representation and/or warranty under this Agreement shall be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and to enforce final judgment.

8.8 No Third Party Rights. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto.

8.9 Authority to Sign. Each of the Parties hereto represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement.

8.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

<u>Chevant Networks, Inc.</u> Depositor	DSI Technology Escrow Services, Inc.
By: <u>[Signature]</u>	By: <u>[Signature]</u>
Name: <u>KEVIN KROH</u>	Name: <u>Lisa G. Reis</u>
Title: <u>VP, FINANCE</u>	Title: <u>Regional Sales Manager</u>
Date: _____	Date: <u>6/3/02</u>

DESIGNATED CONTACT

Master Number 8269

Notices, deposit material returns and communications to Depositor should be addressed to:

Invoices to Depositor should be addressed to:

Company Name: Coherent Networks, Inc.
Address: 1 ADLER DR.
E. SYRACUSE NY 13657

Coherent Networks, Inc.
ACCOUNTS PAYABLE
1 ADLER DR.
E. SYRACUSE NY 13657

Designated Contact: KEVIN KENNEDY
Telephone: (315) 433-1010 (x130)
Facsimile: (315) 433-1004
E-mail: kkenned@co.net
Verification Contact: PAUL HOLLISTER
Telephone/E-mail: (315) 433-1010 (x130)

Contact: TINA EVANS
P.O.#, if required: _____

Requests to change the designated contact should be given in writing by the designated contact or an authorized employee.

DSI has two Operations Centers to service you. Agreements, Deposit Materials and notices to DSI should be addressed to: (select location)

All invoice fee remittances to DSI should be addressed to:

Alt. Client Services
9263 Sky Park Court, Suite 202
San Diego, CA 92123
Telephone: (858) 499-1600
Facsimile: (858) 694-1919
E-mail: clientservices@dsiescrow.com

DSI Technology Escrow Services, Inc.
PO Box 45156
San Francisco, CA 94145-0156

Alt. Client Services
2100 Norcross Parkway, Suite 150
Norcross, GA 30071
Telephone: 770-239-9200
Facsimile: 770-239-9201
E-mail: clientservices@dsiescrow.com

Date: _____

MODIFIED BY OSI

MATERIALS TO BE DEPOSITED

Account Number: ~~8-24-70000~~ 21093

Depositor represents to Preferred Beneficiary that Deposit Materials delivered to OSI shall consist of the following:

Depositor	Preferred Beneficiary
By: <u>Shirley Glad Hollister</u>	By: _____
Name: <u>Dorothy Grace Hollister</u>	Name: _____
Title: <u>Controllor</u>	Title: _____
Date: <u>1/16/03</u>	Date: _____

ADDITIONAL ESCROW ACCOUNT
TO MASTER PREFERRED ESCROW AGREEMENT

Master Number ~~8219-0001~~ 82169

New Account Number ~~8219-0003~~ 211693

MODIFIED
BY DSI

Coherent Networks Inc ("Depositor") has entered into a Master Preferred Escrow Agreement with DSI Technology Escrow Services, Inc. ("DSI"). Pursuant to that Agreement, Depositor may deposit certain Deposit Materials with DSI.

Depositor desires that new Deposit Materials be held in a separate account and be maintained separately from the initial account. By execution of this Exhibit E, DSI will establish a separate account for the new Deposit Materials. The new account will be referenced by the following name:

Depositor hereby agrees that all terms and conditions of the existing Master Preferred Escrow Agreement previously entered into by Depositor and DSI will govern this account. The termination or expiration of any other account of Depositor will not affect this account.

Coherent Networks, Inc
Depositor

By: [Signature]

Name: KEVIN KNAPP

Title: VP Finance

Date: _____

DSI Technology Escrow Services, Inc.

By: [Signature]

Name: Richard Sheffield

Title: VP Operations

Date: 22 Jun 03

EXHIBIT D

RESERVED

EXHIBIT E
BACKGROUND TECHNOLOGY
(INTENTIONALLY LEFT BLANK)

**EXHIBIT F
RESPONSE**

PROPOSAL RESPONSE



November 4, 2014

Mr. Hector Lucero
Utility Buyer
LOS ANGELES DEPARTMENT OF WATER AND POWER
Attn: Vendor Liaison Center
111 North Hope Street, L-43
Los Angeles, CA 90012

**RE: PROPOSAL (RSSP) NO. 90248 – OSMOSE FASTGATE GATEWAY
SOFTWARE MAINTENANCE PROGRAM
DUE: NOVEMBER 4, 2014 BY 2:00 PM**

Dear Mr. Lucero,

At the request of our Director-Business Development, Mr. Peter Griffen, and in response with the above mentioned Request for Proposal dated October 17th, 2014, Osmose Utilities Services, Inc. ("Osmose") appreciates the opportunity to submit the following proposal and pricing schedule for Proposal RSSP No. 90248 pertaining to the Osmose FastGate Gateway Software Maintenance Program. Osmose has thoroughly examined all received RSSP documentation (attachments, addenda, proposal, etc.) and has utilized this information to develop our following proposal response.

This proposal is enabling LADWP to continue to purchase maintenance and support on the FastGate Gateway System for the next seven years at a fixed annual price. Osmose personnel will continue to work closely with LADWP GIS and OMS personnel to make sure that the FastGate Gateway System is functioning efficiently and as designed.

Please note the following for Osmose Utilities Services, Inc.:

- All of our exceptions are listed in the Recommended Revisions attachment.
- A list of personnel authorized to represent Osmose for this important initiative are listed in "Appendix A: Authorized Personnel."
- Addendum 1 was received on October 27, 2014

If you need further assistance or have any questions concerning this proposal, please do not hesitate to contact Peter at 916-204-4603.

Sincerely,

Michael W. Groves, Jr.
Vice President-Contracts

Attachment

MWG/wd

C: File
1015433



EXHIBIT F RESPONSE

EXECUTIVE SUMMARY:

The Los Angeles Department of Water and Power has been using a number of software applications that have been developed and supported by Osmose. One particular software application that is critical to LADWP's operations is the FastGate Gateway System. FastGate is an interactive interface being utilized between the Geospatial Electric System (GES) and the Outage Management System (OMS). FastGate is utilized in this way for both the 4.8 kV distribution network and the 34.5 kV subtransmission network.

The primary focus for this proposal is to provide continued maintenance support for the Osmose FastGate Gateway Software Maintenance Program. This service will be provided at a fixed annual price for the following seven years; the duration of the contract to last the first three years with the final four years as on-year renewal options for LADWP. Osmose will continue to work closely with LADWP to ensure that the FastGate Gateway System continues to function efficiently as designed. This will be accomplished by providing working with LADWP GIS and OMS key personnel to provide the required standard maintenance. This proposal has also allocated monies such that LADWP can request enhancements to the FastGate Gateway System via these Proprietary Maintenance Tasks.

Osmose has provided this ongoing support for LADWP over the past seven years and looks forward to continuing our relationship as a trusted vendor for the FastGate Gateway Software Maintenance Program going forward.

TECHNICAL PROPOSAL

ORGANIZATIONAL / MANAGEMENT APPROACH TO WORK:

Osmose recognizes the important role that the Osmose FastGate Gateway Software plays in effectively managing the communication and validation between LADWP's GIS and OMS applications. As a result, Osmose will efficiently execute the scope of work with the consistent approach that we have implemented for this service in the previous 7 years. Osmose will successfully perform this service by utilizing our skilled technical personnel who possess the expertise to support the software maintenance and other proprietary tasks. The key project personnel to be utilized on this initiative are as follows:

- **Mike Rigney – Product Manager**

Mike will serve as the primary point of contact for this initiative by fielding, reviewing, and executed the requested software maintenance and proprietary tasks. Mike will handle the day-to-day effort of project execution, management, and reporting to LADWP in order to ensure total customer satisfaction. Mike will also effectively manage the project by working closely with LADWP to track and report the effort in relation to the overall project budget. This will insure that both LADWP and Osmose are aware of the overall budget impact of each request, and manage the effort accordingly.

- **Karen Spina – Senior Software Developer**

Karen is a senior software developer with 20 years of experience creating software solutions for various electric utilities. Karen will serve as the primary development resource to Mike Rigney in all matters related to software maintenance and proprietary tasks. She will assist Mike in executing the initiative according to LADWP requirements.

Osmose®

- **Chris LaVenture – Test and Configuration Management**
Chris is the test and configuration manager for Osmose development team. In this role, Chris manages the code within source control, configures build and installation scripts, and configures final deliverables for LADWP. Chris will serve as the lead testing resource to Mike Rigney in support of LADWP project.
- **Andy Beardslee – Director Software Development Delivery**
Andy manages the Osmose software development team. He allocates resources to various projects to ensure that the project deliverables are accomplished on time. Mike Rigney Reports directly to Andy.
- **Greg Tanner – Director Data Delivery Systems**
Greg is the director of Osmose data delivery. This includes the Software Development and Delivery teams. Andy reports directly to Greg.

In support of this initiative, Osmose will implement the following organizational structure:





PROBLEM RESOLUTION AND QUALITY ASSURANCE:

In an effort to manage the risk and control the quality of this program, Osmose will implement a program to identify any and all errors that occur during the scope of service. This program will consist of streamlined reporting of any and all errors or issues identified during the service of installation, operation, and maintenance of the software to the primary Osmose point of contact. Identification of errors or issues will be in compliance with the classification outlined by LADWP in *Exhibit J "Software Maintenance," Section 3.*

As the issue is identified, it will be reported to the Osmose primary point of contact who, in turn, will communicate the error or issue to key LADWP representatives. Osmose will document, research, and resolve the error or issue within a reasonable timeframe after identification. The resolution will be communicated and closed per LADWP's project requirements.

In an effort to reduce or eliminate any errors or issues that may arise during the software maintenance, Osmose will implement full unit and regression testing for each software component. This quality control measure will be executed prior to the delivery of software maintenance and/or proprietary tasks to LADWP. This process will be conducted in full compliance of section "7. *Delivery, Inspection, Acceptance, and Rejection*" of LADWP's "Agreement For Information Technology Products & Services."

REPORTING:

Reporting and communication for this project will be conducted according to LADWP and Osmose requirements based on each Task. Upon the initiation of each Task by LADWP, Osmose will implement the delivery of weekly status reports for the duration of the Task Order. In addition, Osmose will schedule and execute weekly conference calls to discuss relevant project details, status, as well as project schedule management. Osmose will work with LADWP to insure that satisfactory communication mechanisms and frequency are in place prior to the initiation of any requested Task.

TRANSITION AND DISENGAGEMENT PROCEDURES:

The duration of the software maintenance contract is for three years with four one-year renewal options. After the initial three years, either LADWP or Osmose can terminate the contract. Likewise, each one-year renewal period, either LADWP or Osmose can terminate the contract.

During the execution of any proprietary task development, LADWP can terminate the particular task order, once it has been engaged, at any time with written notice. LADWP would be responsible for payment for services rendered up to the time of termination of the task order.

TECHNICAL APPROACH:

For this initiative all requests for Software Maintenance, Escrow Services, and/or Proprietary Tasks will be submitted to the primary point of contact at Osmose for review and execution in accordance to Section 21 "Task Order Development and Approval" of the "Agreement for Information Technology Products & Services." The Osmose primary point of contact will work closely with LADWP key personnel in the initiation, execution, and implementation of any and all requests under the scope of this service. Osmose will execute this service utilizing the same proven approach that we have implemented on this initiative with LADWP over the past seven years.



TASK ASSIGNMENT:

Any Proprietary Maintenance Task which is not provided for in the approved Task Assignment or work which would require additional charges shall not be performed without prior modification of the existing Task Assignment, in writing, by the Contract Administrator.

TASK COMPENSATION:

Proprietary Maintenance Tasks may be performed on a time-and materials basis, including a maximum amount established for a Task Assignment, on a fixed-price basis, or any combination thereof. The particular method of compensation for each Task Assignment will be agreed upon by the parties during negotiations relating to the Task Assignment.

Every Task Assignment shall clearly state the method of compensation, i.e., time-and-materials, or fixed-price, or combination thereof, used for the particular Task Assignment. In the event payments by LADWP are to be made prior to completion of the Task Assignment, the Task Assignment shall contain a performance schedule; and following performance in accordance with such schedule, as previously approved by the parties, interim payments shall be approved by the Contract Administrator and made to Osmose.

TIME-AND-MATERIAL BASIS:

LADWP will pay for time-and-materials based task services at the rates established under "Osmose Professional Tasks Resources Rates" hereto. In any one validity period the rates will not be increased by a percentage greater than the percentage increase the Consumer Price Index. Complete payment for any Task Assignment made on a time-and-materials basis will be limited by the maximum amount established in the Task Assignment.

Rates contained under "Osmose Professional Tasks Resources Rates" are valid through December 31st, 2015. Rates for subsequent one-year validity periods will be supplied in writing to LADWP at the start of each new validity period.

The rates shown may be increased at the start of each new validity period, with LADWP's approval, by a percentage not greater than the percentage increase in the Consumer Price Index, as recorded in the Federal Register, for the 12-month period prior to the increase. Notwithstanding the foregoing, such rates may be increased by a percentage greater than the Consumer Price Index where Osmose can reasonably demonstrate that certain expense items have increased more significantly than the Consumer Price Index.

COMPENSATION FOR EXPENSES:

In addition to the fees for the Proprietary Maintenance Tasks set out herein, LADWP will reimburse Osmose at actual cost for the following expenses when they are incurred in connection with Services provide hereunder:

- Air Travel (Economy Fare)
- Per Diem of \$300 per day to cover land transportation, hotel, meals and parking.

Services rendered on a "time and material" basis, and associated actual travel and living expenses will be invoiced on a monthly basis.



OSMOSE PROFESSIONAL TASKS RESOURCES RATES:

Description	Hourly Rate	Travel Rate	Overtime Rate
Senior Project Manager	\$ 246	\$ 123	\$ 309
Project Manager	\$ 199	\$ 100	\$ 250
Senior Programmer	\$ 176	\$ 88	\$ 221
Programmer	\$ 153	\$ 76	\$ 191
Production Technician	\$ 129	\$ 65	\$ 162

- o All rates are in US dollars.
- o Notwithstanding the rate structure above, Osmose and LADWP can agree on different rates for specific resources.
- o These rates are going to be used exclusively for Time and Material basis type of work.
- o All taxes are excluded from this table.
- o This table assumes that the work is performed on-site and LADWP is providing the resources with necessary workspace, tools and amenities including a computer workstation to carry on their mandate.
- o Rates are valid until December 31, 2015 and can vary from year to year in accordance with Exhibit A.4 Section A.4.4. In any one validity period the rates will not increase by a percentage greater than four percent (4%) per year.



APPENDIX A:
Authorized Personnel

The following are project personnel authorized to represent Osmose for this special initiative:

1. Mike Rigney
 - Product Manager
 - 315-385-3842
 - mrigney@osmose.com
 - 5703 B Enterprise Parkway
East Syracuse, NY, 13057

2. Andy Beardslee
 - Director – Software Development Delivery
 - 315-552-3841
 - abeardslee@osmose.com
 - 5703 B Enterprise Parkway
East Syracuse, NY, 13057

3. Greg Tanner
 - Director – Data Delivery System
 - 770-632-6751
 - gtanner@osmose.com
 - 215 Greencastle Road
Tyrone, GA 30290

4. Karen Spina
 - Senior Software Developer
 - 315-385-3848
 - kspina@osmose.com
 - 5703 B Enterprise Parkway
East Syracuse, NY, 13057

5. Chris LaVenture
 - Test and Configuration Management
 - 315-385-3967
 - claventure@osmose.com
 - 5703 B Enterprise Parkway
East Syracuse, NY, 13057

6. Peter Griffen
 - Director – Business Development
 - 315-552-8382
 - pgriffen@osmose.com
 - 1868 Alice Way
Sacramento, CA 95834



**Los Angeles Department of Water
Bid Package
Proposal (RSSP) No. 90248
Osmose Fastgate Gateway Software Maintenance Program
Due: November 4, 2014 by 2:00 PM**

- ▣ *Recommended Revisions to Los Angeles Department of Water and Power, RSSP Proposal No. 90248, Osmose Fastgate Gateway Software Maintenance Program from our Attorney*
- ▣ *Insurance Certificates*
- ▣ *Business Tax Registration Certificate*
- ▣ *Taxpayer Identification Number*
- ▣ *Child Support Policy*
- ▣ *Non-Discrimination and Equal Employment Practices*
- ▣ *Contractor Responsibility Program*
- ▣ *Living Wage Ordinance*
- ▣ *Municipal Lobbying Ordinance (Bidder Certification CEC Form 50)*
- ▣ *Small Business Enterprise (SBE) Participation Program*
- ▣ *List of Proposed Subcontractors*
- ▣ *Affirmative Action Plan*
- ▣ *Bidder Campaign Contributions and Fundraising (Prohibited Contributors (Bidders) CEC Form 55)*
 - *California – Contractor License*
 - *Osmose Utilities Services, Inc.-Secretary's Certificate*
- ▣ *Iran Contracting Act of 2010*
- ▣ *Safety Program (Safety Compliance Certificate)*

Recommended Revisions to Los Angeles Department of Water and Power, RSSP Proposal No. 90248, Osmose Fastgate Gateway Software Maintenance Program from our Attorney

Below are recommended revisions to your RSSP Proposal No. 90248, Osmose Fastgate Gateway Software Maintenance Program from our Attorney.

If you have any questions or concerns, or if you would like to resolve any issues regarding our revisions, please do not hesitate to contact our Attorney, Ms. Vera Cedano, at (716) 319-3473.

Section Four – Draft Agreement

- 3(a) Please amend to read: “Unless expressly agreed to otherwise in a Statement of Work, the Specifications, the Schedule and the Fees are as described in such Statement of Work, and shall not be changed without the prior, written consent of the LADWP and the Contractor.” *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
5. Please add at the end of the paragraph: “Notwithstanding the above Contractor shall not be deemed to be in violation nor shall Contractor suffer any penalties from delays in the performance of the Work that arise from delays that are caused or partially caused by the LADWP.” *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 6(b) Please add at the end of the paragraph: “As this Agreement is for software maintenance, Contractor shall not be required to remedy any work, errors, or omissions after the termination of this Agreement, provided that such work, errors or omissions were not caused by Contractor during the term of this Agreement.” *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 7(c) Please amend to read: “Upon the completion of the inspection and testing described in Subsection 7(b) (“Inspection”), the LADWP shall inform Contractor of whether the corresponding Deliverables are accepted or rejected by the LADWP. Any failure of the LADWP to provide such notice within ~~sixty (60)~~ thirty (30) days of delivery shall be deemed a rejection an automatic acceptance thereof.” *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 7(d) Please delete this section in its entirety as it is not appropriate for the scope of the Work: “**Quality Program.** If so provided in EXHIBIT D (“CONTRACTOR’S QUALITY ASSURANCE PROGRAM”), Contractor and its Authorized Subcontractors will provide and maintain such Contractor’s Quality Assurance Program throughout the Term of this Agreement. Contractor will keep records evidencing related quality inspections and their result, and will make such records available to the LADWP upon request throughout the Term and for three (3) years thereafter. Contractor shall permit the LADWP to review procedures, practices, processes, and related documents to determine the acceptability of Contractor’s Quality Assurance Program or other similar business practices related to performance of this Agreement.” *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*

- 12(a) Please amend to read: "The LADWP shall pay the Fees described in each Statement of Work for Services and Deliverables which have been accepted by the LADWP *within thirty days of receipt.*" *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 12(h) Please delete this section in its entirety: "~~**Most Favored Customer.** Contractor hereby covenants and warrants that throughout the Term of this Agreement, the Fees payable hereunder shall be no higher than the prices charged by Contractor to its other customers for like goods and services. Contractor shall notify the LADWP immediately of any offer to any other customer of more favorable prices as hereinabove described, and the Fees payable by the LADWP hereunder shall thereupon be deemed reduced to an equivalent level. The LADWP shall have the right, upon reasonable notice, to review the books and records of Contractor to confirm that Contractor has complied with the requirements of this Subsection 12(h) ("Most Favored Customer").~~" *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 13(c) Line 10. Please amend to read: "...the Breaching party. *Notwithstanding the above, Contractor reserves the right to submit a business plan to LADWP to resolve any issues regarding breach that cannot be resolved within said ten day period and LADWP agrees to give reasonable consideration to said business plan.* Without limiting the ..." *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 13(c) Line 11. Please amend to read: "(i) any late payment of Fees by the LADWP shall not, in and of itself, be deemed a material breach of this Agreement, *unless such non (or late) payment exceeds a period of ninety (90) days from the date of the receipt of the original invoice in which case the non-payment shall be deemed a material breach of the Agreement,*" *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 13(h) Please amend to read: "The Contractor will be responsible for correcting or remedying any errors or omissions which occur in performance of the services under this Agreement and which are the result of the Contractor's negligence, action or omission, regardless of whether the foregoing are a material breach hereof or not, *as long as the LADWP is current in its maintenance contract.*" *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 16(b) Please delete this section in its entirety as it is not appropriate for the scope of the Work: "~~**Progress Reports.** The Contractor shall, as required by the Contract Administrator from time to time, submit reports summarizing all the Tasks under this Agreement, the work accomplished, work left to be done, work to be done in the coming months, and the estimated completion dates, including without limitation any deviations or reasonably likely deviations from the Schedule. Each such report shall be organized by Task and shall include the Task number, Task coordinator, Task title, the authorized Fee, the start date and completion date, and the total of Fees received to date by the Contractor. Such report shall also show the total Fees received by the Contractor under this Agreement.~~" *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 17(a) Please delete the entire paragraph and replace with: "~~**Disclosure of Work Product.** LADWP Work Product shall be limited in meaning to the proprietary data that is entered into Contractor's software, expressly excluded from LADWP Work Product is the Contractor's software and any improvements or derivations thereof. Contractor agrees that any and all Inventions made, learned, derived, conceived, written, created or first reduced to practice in the performance of work under this Agreement shall be the sole and exclusive property of LADWP.~~" *This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*

- 17(c) Please delete the entire paragraph and replace with: *“Assignment and License. LADWP is granted a limited use license.” This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 17(d) Please delete this section in its entirety: ~~“Waiver or Assignment of Rights. If Contractor has any rights to the LADWP Work Product which cannot be assigned to the LADWP, Contractor unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against the LADWP with respect to such rights, and agrees, at the LADWP’s request and expense, to consent to and join in any action to enforce such rights. If Contractor has any right to the LADWP Work Product which cannot be assigned to the LADWP or waived by Contractor, Contractor unconditionally and irrevocably grants to the LADWP during the term of such rights, an exclusive (both as to Contractor and all third parties), fully transferable, irrevocable, perpetual, worldwide, fully paid and royalty free license, with rights to sublicense through multiple tiers of sublicensees, to reproduce, make derivative works of, publicly perform, and publicly display in any form or medium, whether now known or later developed, digitally perform, distribute, make, have made, use, lease, offer for sale, import and sell goods and services under such rights. Contractor hereby waives and quitclaims to the LADWP any and all claims, of any nature whatsoever, which Contractor now has or may hereafter have for infringement of any Proprietary Rights assigned hereunder to the LADWP.” This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.~~
- 17(g) Please delete this section in its entirety: ~~“Existing Software License. Contractor hereby grants to the LADWP a worldwide, perpetual, irrevocable, nonexclusive, royalty free, paid up, transferable license, including the right to grant sublicenses through multiple tiers, with respect to the Existing Software in order to use, copy, execute, publicly perform, publicly display, digitally perform and create derivative works of the Existing Software.” This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.~~
- 18(f) Please delete the entire paragraph and replace with: *“Osmose shall provide, at the Department’s expense, a copy of the complete and generable source code in an escrow account, including all supporting documentation, if any, with the Software as it is received pursuant hereto. The source code agreement to be entered into shall contemplate that the source code shall only be released to the LADWP upon Osmose’s bankruptcy or ceasing to carry out its activities. The cost of this service is not to exceed 13,300 over the Term. In the event LADWP fails to reimburse Contractor for the costs associated with the escrow account within sixty (60) days of the presentation of an invoice then Contractor reserves the right to terminate the escrow account.” This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 19(a) Please add at the end of the paragraph: *“Notwithstanding the above, Contractor shall not be required to indemnify LADWP from any claims of intellectual property if the Deliverables have been altered in any manner other than the contractor or if the Deliverables are being used in any manner not expressly authorized by Contractor.” This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.*
- 19(c) Please delete this section in its entirety: ~~“Bonds. Contractor understands and agrees that it shall, upon the LADWP’s request, furnish a bond to the LADWP, in an amount as may be reasonable in the LADWP’s judgment, against any and all loss, damage, costs, expenses, claims and liability for any possible infringement or misappropriation.” This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.~~

- 20(a) Please delete this section in its entirety: ~~“Hardware Maintenance. Commencing with the first day after the expiration of the Hardware warranty described in SECTION 22 (“WARRANTIES”), Contractor shall immediately commence providing Hardware Maintenance which shall consist of those activities and services described as such in EXHIBIT I (“HARDWARE MAINTENANCE”).” This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.~~
- 20(b) Please amend to read: “Commencing with the first day after the expiration of the Software warranty described in SECTION 22 (“WARRANTIES”), *and provided LADWP has paid Contractor the applicable maintenance fee then*, Contractor shall immediately commence providing Software Maintenance...” This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.
- 20(d) Please delete this section in its entirety as we are not providing hardware services: ~~“Availability. Commencing with the Effective Date, and for five (5) years after the expiration or termination of this Agreement, whichever comes first, Contractor agrees that it shall continue to offer for sale to the LADWP, at commercially reasonable prices (and subject to Subsection 12(h) (“Most Favored Customer”)), all Hardware supplies, materials and spare parts. To the extent that Contractor is not willing or able to comply with the foregoing obligation (and without waiving any rights or remedies the LADWP may have with respect thereto), Contractor shall provide to the LADWP its full cooperation and all documents, diagrams or designs necessary or useful to make, have made, use, lease, offer for sale, import and sell such Hardware supplies, materials and spare parts, and hereby grants to the LADWP a royalty free, fully paid, worldwide, nonexclusive, non transferable immunity under all intellectual property rights owned or licensable by Contractor in order to enable the LADWP to make, have made, use, lease, offer for sale, import and sell such Hardware supplies, materials and spare parts.” This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.~~
- 22(a) Please amend to read: **“Deliverables.** Contractor hereby represents and warrants that the Deliverables (including without limitation all Hardware and Software, but not including Services) shall materially conform to their corresponding Specifications (including without limitation all Documentation) in normal use for a period of ~~three (3) years~~ *thirty (30) days* from the date of ~~their acceptance by delivery to the LADWP.”~~ This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.
- 22(a) Please delete the last sentence: ~~“Any such repaired or replaced Deliverables shall continue to have the balance of their warranty period as hereinabove stated; provided, however, that such warranty period shall in no event be less than ninety (90) days.”~~ This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.
- 22(e) Please amend to read: ~~“THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ANY AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED AND NEGATED, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT. CONTRACTOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In no event shall Contractor be responsible for incidental, consequential, indirect, special, exemplary or punitive damages unless caused by the willful misconduct of Contractor. If any Work is found not to conform to the specifications, Contractor shall, at its option, either refund that portion of Contractor’s fees pertaining to such non-conforming work or repair or replace the defective Work at no cost to the Department. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR HAS ANY AUTHORITY TO MAKE OR BIND CONTRACTOR TO ANY REPRESENTATIONS OR WARRANTY~~

CONCERNING THE SERVICES FURNISHED UNDER THIS AGREEMENT AND ANY SUCH ORAL OR WRITTEN REPRESENTATION OR WARRANTY NOT EXPRESSLY SET FORTH IN THIS AGREEMENT SHALL NOT BE ENFORCEABLE. CONTRACTOR DOES NOT WARRANT THAT THE SERVICES WILL ENSURE THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE OF UNINTERRUPTED. Furthermore, the total cumulative liability of Contractor and its subcontractors and suppliers arising from the performance or a failure to perform work pursuant to this Agreement, whether in tort, contract, or strict liability, or otherwise including all expenses incurred or payable by Contractor in satisfaction of its indemnification obligations under this Agreement, shall not exceed the total fees paid to Contractor under this Agreement." This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.

23. Please delete this section in its entirety: "~~LIMITATION OF LIABILITY. IN NO EVENT SHALL THE TOTAL LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT EXCEED THE HIGHER OF ONE MILLION DOLLARS (\$1,000,000) OR THE TOTAL AGREEMENT PRICE, REGARDLESS OF THE CAUSE OF ACTION, IN TORT, CONTRACT OR OTHERWISE.~~" This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.

Exhibit A - Statement of Work

Quality and Acceptance Delivery, Inspection, Acceptance and Rejection. Inspection; Acceptance and Rejection; Quality – please delete these sections to avoid any conflicts as they are covered under the Agreement.

Exhibit B - Government and Insurance Terms

- 2.11 Please delete this section in its entirety to avoid any conflicts with the Agreement: "~~**Indemnification** The Contractor undertakes and agrees to indemnify and hold harmless the City of Los Angeles, the Department of Water and Power, the Board of Water and Power Commissioners of the City of Los Angeles, and all of their officers and employees, and, at the option of the LADWP, defend the LADWP, and any and all of their Boards, officers, agents, representatives, employees, assigns and successors in interest from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including contractor's employees and agents, or damage or destruction to any property of either party hereto, or third persons in any manner arising by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this contract on the part of the contractor, or the contractor's officers, agents, employees, or subcontractors of any tier, except for the active negligence or willful misconduct of the LADWP, its Board, officers, agents, representatives or employees.~~" This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.

Exhibit C - Escrow Agreement

Osmose respectfully requests to continue to use the current escrow agreement already in place from 2007.

Exhibit K – Right to Audit Clause

1. Please amend to read: "*Provided the LADWP has executed Contractor's non-disclosure agreement, then the Contractor and the Contractor's subcontractors and suppliers shall be subject at any time with 7 calendar days prior written notice to audits by the Department...*" This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.

p.2 last paragraph Please amend to read: "Notwithstanding the foregoing, if the audit reveals that the overpayment is more than ~~5%~~ 10% of the billing, the Contractor shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the audit." This exception was previously negotiated in Agreement No. 47726-8 dated October 2, 2008.

p.3 paragraph 1 Please delete this paragraph in its entirety: "~~The Department shall have the right at any time without notice to Contractor to set off against any amount due Contractor from the Department under this contract or any other contract.~~"

Appendix E – Equal Benefits Ordinance Compliance Affidavit

Per Section 10.8.2.1 Equal Benefits Ordinance. Section (i) (1) a., Osmose respectfully requests LADWP waive this requirement.

Appendix S – Confidentiality Agreement for LADWP Proprietary Information

B.6 Please delete this section in its entirety due to the burdensome nature of the obligations contained therein: "~~The Contractor shall require that all its employees, agents, and subcontractors who shall, or may, review, be provided, or have access to LADWP data, information, personnel or customer files, confidential information, documents, or records during the performance of this Agreement, execute a confidentiality agreement that incorporates the provisions of this Confidentiality Agreement, prior to performing work under this Agreement.~~"

EXHIBIT L

For Contractors, Service Providers, Vendors, and Tenants

Agreement/Activity/Operation: Req# 112413/RSSP No. 90248 Osmose Fastgateway - Software
Reference/Agreement: _____
Term of Agreement: CERTIFICATE ACCEPTABLE
Contract Administrator and Phone: John Litwin - 74005
Buyer and Phone Number: Hector Lucero - 72619

Contract-required types and amounts of insurance as indicated below by checkmark are the minimum which must be maintained. All limits are Combined Single Limit (Bodily Injury/Property Damage) unless otherwise indicated. Firm 30 day Notice of Cancellation required by Receipted Delivery.

PER OCCURRENCE LIMITS

- WORKERS' COMPENSATION(Stat. Limits)/Employer's Liability: (\$1,000,000.00)
 Broad Form All States Endorsement US L&H (Longshore and Harbor Workers)
 Jones Act (Maritime Employment) Outer Continental Shelf
 Waiver of Subrogation Black Lung (Coal Mine Health and Safety)
 Other: _____ Other: _____
- AUTOMOBILE LIABILITY: (\$1,000,000.00)
 Owned Autos Any Auto
 Hired Autos Non-Owned Auto
 Contractual Liability Additional Insured
 MCS-90 (US DOT) Trucker's Form
 Waiver of Subrogation Other: _____
- GENERAL LIABILITY: Limit Specific to Project Per Project Aggregate (\$1,000,000.00)
 Broad Form Property Damage Contractual Liability Personal Injury
 Premises and Operations Products/Completed Ops. Independent Contractors
 Fire Legal Liability Garagekeepers Legal Liab. Child Abuse/Molestation
 Corporal Punishment Collapse/Underground Explosion Hazard
 Watercraft Liability Pollution Addition Insured Status
 Waiver of Subrogation Airport Premises Hangarkeepers Legal Liab.
 Marine Contractors Liability Other: _____ Other: _____
- PROFESSIONAL LIABILITY: ()
 Contractual Liability Waiver of Subrogation 3 Year Discovery Tail
 Additional Insured Vicarious Liability Endt. Other: _____
- AIRCRAFT LIABILITY: ()
 Passenger Per Seat Liability Contractual Liability Hull Waiver of Subrogation
 Pollution Additional Insured Other: _____
- PROPERTY DAMAGE: Loss Payable Status (AOIMA) ()
 Replacement Value Actual Cash Value Agreed Amount
 All Risk Form Named Perils Form Earthquake: _____
 Builder's Risk:\$ _____ Boiler and Machinery Flood: _____
 Transportation Floater:\$ _____ Contractors Equipment\$ _____ Loss of Rental Income: _____
 Scheduled Locations/Propt. Other: _____ Other: _____
- WATERCRAFT: ()
 Protection and Indemnity Pollution Additional Insured
 Waiver of Subrogation Other: _____ Other: _____
- POLLUTION: ()
 Incipient/Long Term Sudden and Accidental Additional Insured
 Waiver of Subrogation Contractor's Pollution Other: _____
- CRIME: Joint Loss Payable Status Additional Insured ()
 Fidelity Bond Financial Institution Bond Loss of Monies/Securities
 Employee Dishonesty In Transit Coverage Wire Transfer Fraud
 Computer Fraud Commercial Crime Forgery/Alteration of Docs.
 Other: _____ Other: _____
- ASBESTOS LIABILITY: Additional Insured ()

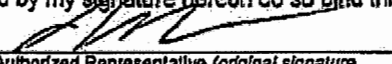
**WORKERS' COMPENSATION/EMPLOYER'S LIABILITY – SPECIAL ENDORSEMENT
CITY OF LOS ANGELES
DEPARTMENT OF WATER AND POWER**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **APPLICABILITY:** This insurance pertains to the operations and/or tenancy of the Named Insured under all written agreements in force with the Department of Water and Power unless checked here , in which case only the following specific agreements with the Department of Water and Power are covered:
2. **CANCELLATION NOTICE:** With respect to the interests of the Department of Water and Power, this insurance shall not be cancelled, materially reduced in coverage or limits, or nonrenewed unless thirty (30) days' prior written notice by receipted delivery is given to the City Attorney of Los Angeles addressed as follows: Office of the City Attorney, Water and Power Division, 111 N. Hope Street, Room 340, Los Angeles, California 90012. *10 days prior written notice for cancellation for non-payment of premium*
3. **MAILING ADDRESS:** Completed endorsements will be sent to the Department of Water and Power as follows:
Los Angeles Department of Water and Power
Risk Management Section
P.O. Box 51111, Rm. 465
Los Angeles, California 90051-0100

Except as stated above, nothing herein shall be held to waive, alter, or extend any of the limits, conditions, agreements, or exclusions of the policy to which this endorsement is attached.

I, Thomas Long (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.

4. Signature 
Authorized Representative (original signature required on copy furnished to the City Attorney)

5. ORGANIZATION AIG

ADDRESS 500 W. MADISON
CHICAGO, IL 60661

TITLE Attorney-in-Fact

TELEPHONE 312 930 5374

6. Type of Coverage	7. Limits of Liability	8. Policy Period	
		From	To
Workers' Compensation	Statutory	7/1/14	7/1/15
Employer's Liability	\$ <u>1,000,000</u>		

9. Coverage Includes (check as applicable):

- | | |
|---|--|
| <input type="checkbox"/> Broad Form All States Endorsement | <input type="checkbox"/> Jones Act |
| <input type="checkbox"/> Voluntary Compensation Endorsement | <input type="checkbox"/> Outer Continental Shelf Endorsement |
| <input checked="" type="checkbox"/> United States Longshoremen's and Harbor Workers' Compensation Act | <input checked="" type="checkbox"/> Waiver of Subrogation * |

* Waiver of Subrogation – The company agrees to waive all rights of subrogation against the City of Los Angeles, the Board of Water and Power Commissioners of the City of Los Angeles, the Department of Water and Power of the City of Los Angeles, and their officers, agents, and employees.

10. Other Provisions (please note on reverse side):

11. Named Insured and Address: Osmore Holdings, Inc. 980 Ellicott Street, Buffalo, NY 14209			
12. Insurance Company National Union Fire Ins Co Pittsburgh Pa	13. Policy Number 18962553	14. Endorsement No.	15. Effective Date of Endorsement 07/01/2014

**GENERAL LIABILITY -- ADDITIONAL INSURED ENDORSEMENT
CITY OF LOS ANGELES
DEPARTMENT OF WATER AND POWER**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

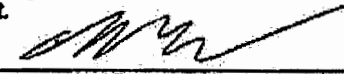
1. **ADDITIONAL INSUREDS:** The City of Los Angeles, the Board of Water and Power Commissioners of the City of Los Angeles, the Department of Water and Power, their officers, agents, and employees are included as Insureds with regard to liability and defense of suits arising from the operations and uses performed by or on behalf of the Named Insured.
2. **CONTRIBUTION NOT PERMITTED:** Any other insurance maintained by the Department of Water and Power shall be excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST:** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the insurer's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE:** With respect to the interests of the Department of Water and Power, this insurance shall not be cancelled, materially reduced in coverage or limits, or nonrenewed unless thirty (30) days' prior written notice by receipted delivery is given to the City Attorney of Los Angeles addressed as follows: Office of the City Attorney, Water and Power Division, 111 N. Hope Street, Room 340, Los Angeles, California 90012.
5. **APPLICABILITY:** This insurance pertains to the operations and/or tenancy of the Named Insured under all written agreements in force with the Department of Water and Power unless checked here , in which case only the following specific agreements with the Department of Water and Power are covered:

6. **MAILING ADDRESS:** Completed endorsements will be sent to the Department of Water and Power as follows:
7. **CLAIMS:** Claims should be reported to:

Los Angeles Department of Water and Power
Risk Management Section
P.O. Box 51111, Rm. 465
Los Angeles, California 90051-0100

Except as stated above, nothing herein shall be held to waive, alter, or extend any of the limits, conditions, agreements, or exclusions of the policy to which this endorsement is attached.

I, Thomas Loney, (print type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company to this endorsement.

8. Signature: 
Authorized Representative (original signature required on a copy furnished to the City Attorney)

TITLE: Attorney-in-Fact

9. ORGANIZATION: AIG

ADDRESS: 500 W. MADISON
CHICAGO IL 60661

TELEPHONE: 312 930 5543

10. Coverage Includes (check as applicable):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Broad Form Property Damage | <input checked="" type="checkbox"/> Contractual Liability |
| <input checked="" type="checkbox"/> Personal Injury | <input type="checkbox"/> Owned Automobiles |
| <input checked="" type="checkbox"/> Premises and Operations | <input type="checkbox"/> Non-owned Automobiles |
| <input checked="" type="checkbox"/> Explosion Hazard | <input type="checkbox"/> Hired Automobiles |
| <input checked="" type="checkbox"/> Collapse/Underground Hazard | <input type="checkbox"/> Pollution |
| <input type="checkbox"/> Watercraft Liability | <input type="checkbox"/> |
| <input type="checkbox"/> Garagekeeper's Legal Liability | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Incidental Medical Malpractice | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Products/Comp. Ops. \$ <u>2,000,000</u> Aggregate | |
| <input checked="" type="checkbox"/> Independent Contractors \$ <u> </u> Aggregate | |
| <input checked="" type="checkbox"/> Fire Legal Liability <u>1,000,000</u> Sublimits | |

<p>11. Type of Coverage</p> <p><input checked="" type="checkbox"/> Occurrence <input type="checkbox"/> Claims Made -- Retroactive Date</p> <p>14. <input type="checkbox"/> Deductible <input type="checkbox"/> Self-insured Retention (check which) of \$ _____ applies to _____ coverage. <input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence</p> <p><input type="checkbox"/> Limits include Defense Costs <input type="checkbox"/> Deductible/Self-insured Retention includes Defense Costs</p>	<p>12. Limits of Liability</p> <table border="0"> <tr> <td>Occurrence</td> <td>Aggregate</td> </tr> <tr> <td>\$ 1,000,000</td> <td>\$ 2,000,000</td> </tr> </table>	Occurrence	Aggregate	\$ 1,000,000	\$ 2,000,000	<p>13. Policy Period</p> <p>From 7/1/14 To 7/1/15</p>
Occurrence	Aggregate					
\$ 1,000,000	\$ 2,000,000					
<p>15. Other provisions (use reverse side, if necessary):</p>						
<p>16. Named Insured and Address:</p> <p>OSMOSE HOLDINGS INC. 980 ELLICOTT STREET, BUFFALO, NY 14209</p>						
<p>17. Insurance Company</p> <p>NATIONAL UNION FIRE INS CO OF PITTS PA</p>	<p>18. Policy Number</p> <p>7267145</p>	<p>19. Endorsement No.</p>				
		<p>20. Effective Date of Endorsement</p> <p>7/1/2014</p>				

**AUTOMOBILE LIABILITY - ADDITIONAL INSURED ENDORSEMENT
CITY OF LOS ANGELES
DEPARTMENT OF WATER AND POWER**

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **ADDITIONAL INSUREDS:** The City of Los Angeles, the Board of Water and Power Commissioners of the City of Los Angeles, the Department of Water and Power, their officers, agents, and employees are included as insureds with regard to liability and defense of claims arising from the ownership, maintenance, or use of the insured vehicles being operated by or on behalf of the Named Insured.
2. **CONTRIBUTION NOT PERMITTED:** Any other insurance maintained by the Department of Water and Power shall be excess of this insurance and shall not contribute with it.
3. **SEVERABILITY OF INTEREST:** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the insurer's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
4. **CANCELLATION NOTICE:** With respect to the interests of the Department of Water and Power, this insurance shall not be cancelled, materially reduced in coverage or limits, or nonrenewed unless thirty (30) days prior written notice by registered delivery is given to the City Attorney of Los Angeles addressed as follows: Office of the City Attorney, Water and Power Division, 111 N. Hope Street, Room 340, Los Angeles, California 90012. *(10 days prior written notice for cancellation for non-payment of premium)*
5. **APPLICABILITY:** This insurance pertains to the operations and/or tenancy of the Named Insured under all written agreements in force with the Department of Water and Power unless checked here , in which case only the following specific agreements with the Department of Water and Power are covered:

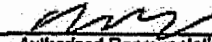
6. **MAILING ADDRESS:** Completed endorsements will be sent to the Department of Water and Power as follows:

Los Angeles Department of Water and Power
Risk Management Section
P.O. Box 51111, Rm. 485
Los Angeles, California 90051-0100

7. **CLAIMS:** Claims should be reported to:

Except as stated above, nothing herein shall be held to waive, alter, or extend any of the limits, conditions, agreements, or exclusions of the policy to which this endorsement is attached.

I, Thomas Long (print/type name), warrant that I have authority to bind the below-listed insurance company and by my signature hereon do so bind this company.

8. Signature 
Authorized Representative (original signature required on copy furnished to the City Attorney)

9. ORGANIZATION AIG
ADDRESS 500 W. MADISON
CHICAGO IL 60661
TELEPHONE 312 930 5341

TITLE Attorney-in-Fact

10. Type of Coverage COMMERCIAL AUTO	11. Limits of Liability \$3,000,000	12. Policy Period From 7/1/14 To 7/1/15	<input type="checkbox"/> A Deductible of \$ _____ <input type="checkbox"/> A Self-Insured Retention of \$ _____ Applies <input type="checkbox"/> Per Claim <input type="checkbox"/> Per Occurrence For _____ (which coverage)
13. Coverage Includes (check as applicable): <input checked="" type="checkbox"/> Owned Automobiles <input checked="" type="checkbox"/> Hired Automobiles <input checked="" type="checkbox"/> Non-Owned Automobiles <input type="checkbox"/> Contractual Liability <input type="checkbox"/> _____		14. Other provisions (use reverse side, if necessary):	
15. Named Insured and Address:			
16. Insurance Company NATIONAL UNION FIRE INS CO OF PITT PA	17. Policy Number 3500794	18. Endorsement No.	19. Effective Date of Endorsement 7/1/2014

ENDORSEMENT No. 2

This endorsement, effective 12:01 AM: July 1, 2014

Forms a part of policy no: BE 080850586

Issued to: OSMOSE HOLDINGS, INC.

By: NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

Commercial Umbrella Liability Policy with CrisisResponse®

Additional Insured(s) Endorsement

This policy is amended as follows:

Section VII. DEFINITIONS, Paragraph M. is amended to include the following additional provision:

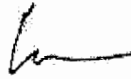
Insured means:

the following entity(ies) listed below. Such entity(ies) is included as an additional **Insured**, solely as respects liability arising out of any operations or activities performed by or on behalf of the **Named Insured**:

City of Los Angeles Department of Water and Power

All other terms, definitions, conditions, and exclusions of this policy remain unchanged.

NOTICE: THESE POLICY FORMS AND THE APPLICABLE RATES ARE EXEMPT FROM THE FILING REQUIREMENTS OF THE NEW YORK STATE INSURANCE LAW AND REGULATIONS. HOWEVER, THE FORMS AND RATES MUST MEET THE MINIMUM STANDARDS OF THE NEW YORK INSURANCE LAW AND REGULATIONS.
89450 (6/06) 2-13000
AH1670



Christopher G. Kopper
Authorized Representative
or Countersignature (Where Applicable)



Lloyd's Certificate

This Insurance is effected with certain Underwriters at Lloyd's, London.

This Certificate is issued in accordance with the limited authorization granted to the Correspondent by certain Underwriters at Lloyd's, London whose syndicate numbers and the proportions underwritten by them can be ascertained from the office of the said Correspondent (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified herein, Underwriters hereby bind themselves severally and not jointly, each for his own part and not one for another, their Executors and Administrators.

The Assured is requested to read this Certificate, and if it is not correct, return it immediately to the Correspondent for appropriate alteration.

All inquiries regarding this Certificate should be addressed to the following Correspondent:

Miller Insurance Services LLP
Dawson House,
5 Jewry Street,
London EC3N 2PJ.

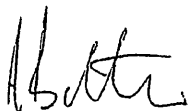
SLC-3 (USA) NMA2868 (24/08/00) amended.

This Declaration Page is attached to and forms part of
Certificate provisions (SLC-3 USA amended)

Previous No: B0621POSM00113
Authority Ref. No: B0621PFDO08514
Certificate No: B0621POSM00114
Insurance is effective with: Certain UNDERWRITERS AT LLOYD'S, LONDON 100%
Scheduled as follows:

AGM2488	65.0000%
RNR1458	10.3960%
BRT2987	10.3960%
PEM4000	6.9310%
ARK4020	3.4650%
CSL1084	3.8120%

Signed



Dated 9 September 2014

By Andrew Bettis
For the Correspondent

Signed



Dated 9 September 2014

By Terry Webb
For the Correspondent

CERTIFICATE PROVISIONS

- 1. Signature Required.** This Certificate shall not be valid unless signed by the Correspondent.
- 2. Correspondent Not Insurer.** The Correspondent is not an Insurer hereunder and neither is nor shall be liable for any loss or claim whatsoever. The Insurers hereunder are those Underwriters at Lloyd's, London whose syndicate numbers can be ascertained as hereinbefore set forth. As used in this Certificate "Underwriters" shall be deemed to include incorporated as well as unincorporated persons or entities that are Underwriters at Lloyd's, London.
- 3. Assignment.** This Certificate shall not be assigned either in whole or in part without the written consent of the Correspondent endorsed hereon.
- 4. Attached Conditions Incorporated.** This Certificate is made and accepted subject to all the provisions, conditions and warranties set forth herein, attached or endorsed, all of which are to be considered as incorporated herein.
- 5. Complaints.** All complaints must be referred in the first instance to the Coverholder and, if no satisfaction is obtained, complaints can be referred to the Complaints Department, Lloyd's whose address is:

Complaints Department, Lloyd's, One Lime Street, London EC3M 7HA, UK.
Tel. +44 (0)20 7327 1000
www.lloyds.com

Lloyd's is Authorised under the Financial Services and Markets Act 2000 and regulated by the Financial Conduct Authority and the Prudential Regulation Authority, whose addresses are as follows::

Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS
Tel. +44 20 7066 1000
www.fca.org.uk

DECLARATIONS

Attaching to and forming part of
PROFESSIONAL LIABILITY INSURANCE CERTIFICATE NUMBER: B0621POSM00114

This Insurance is effected with certain
Underwriters at Lloyd's, London (not incorporated)

**THIS IS A CLAIMS-MADE PROFESSIONAL LIABILITY
INSURANCE CERTIFICATE. PLEASE READ CAREFULLY.**

1. Named Insured:

Osmose Utilities Services, Inc.
Osmose Communication Services, LLC
TelPlexus, LLC (former firm)
BBCom, LLC (former firm)
North Star Structural Contractors Ltd

Address:

980 Ellicott Street
Buffalo
New York 14209
USA

2. Period of Insurance:

From: 15th August 2014
To: 1st July 2015
Both dates at 12:01 a.m. Local Standard Time at the above address

3. Limit of Liability:

- (a) USD 1,000,000 each claim
- (b) USD 1,000,000 annual aggregate

4. Deductible:

USD 50,000

5. Gross Premium:

6. Retroactive Date:

Refer to Attached Endorsement.

7. Notice of Claim to:

Triton Claims - operated by DCS North America, LLC
740 Waukegan Road, Suite 204
Deerfield, IL 60015
www.dcsglobalclaims.com

8. Professional Services:

Professional Services as per the application

9. Notice of Election:

CRC Insurance Services, Inc
105 West Adams Street
18th Floor
Chicago
IL
USA

10. Service of Suit:

Mendes & Mount LLP
750 Seventh Avenue
New York
NY 10019-6829

11. Choice of Law:

New York

Attachments:

- I. Nuclear Incident Exclusion Clause - Liability - Direct (Broad) - U.S.A.
- II. Radioactive Contamination Exclusion Clause - Liability – Direct - U.S.A.
- III. Application Endorsement
- IV. Several Liability Notice
- V. Sanction and Limitation Exclusion Clause
- VI. Retroactive Date Endorsement
- VII. General Liability Warranty
- VIII. Extended Reporting Period Endorsement
- IX. No Claims Declaration Endorsement
- X. Contingent Bodily Injury and Property Damage Endorsement
- XI. Faulty Workmanship Exclusion
- XII. General Products and Completed Operations Exclusion Endorsement
- XIII. Additional Assured Endorsement
- XIV. Notice of Cancellation Endorsement
- XV. Waiver of Subrogation
- XVI. Exclusion

THE INSURER(S) NAMED HEREIN IS (ARE) NOT LICENSED BY THE STATE OF NEW YORK, NOT SUBJECT TO ITS SUPERVISION, AND IN THE EVENT OF THE INSOLVENCY OF THE INSURER(S), NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE DEPARTMENT OF FINANCIAL SERVICES PERTAINING TO POLICY FORMS.

OHI Intermediate Holdings Inc.
PHI Parent, Inc

are added as additional Assureds of this Certificate for Claims first made against them during the Certificate Period, but only with respect to liability for Professional Services which are covered by this Certificate and then only to the extent the Named Assured would have been liable and coverage would have been afforded under the terms and conditions of this Certificate had such Claim been made against the Named Assured.

The above mentioned extension of coverage shall not apply to any Claim which includes allegations or facts indicating actual or alleged independent or direct liability on the part of any such entity detailed above.

It is a condition precedent to liability under the above mentioned extension of coverage that such entity detailed above shall prove to Underwriters' satisfaction the extent of any Claim arising out of the Named Assured's conduct as described above.

XIV. NOTICE OF CANCELLATION ENDORSEMENT

In the event that Underwriters cancel this Certificate in accordance with clause **XVIII. CANCELLATION B.** it is hereby understood and agreed that the

Los Angeles Department of Water & Power
111 N.Hope Street, Room
Los Angeles
CA 90012 and

Crown Castle USA Inc.
Attn: Legal Dept., Contractor Insurance
1500 Corporate Drive
Canonsburg PA 15317

will be provided with a written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective.

XV. WAIVER OF SUBROGATION

It is understood and agreed that Clause XIV SUBROGATION is deleted and replaced as follows:

XIV. Subrogation

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the Assured's rights of recovery therefore against any person or organization, and the Assured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Assured shall do nothing to prejudice such rights. The Underwriters agree to waive their rights of recovery against any client of the Assured for a Claim which is covered pursuant to this Certificate to the extent the Assured had, prior to such Claim, a written agreement to waive such rights. Any recoveries shall be applied first to subrogation expenses, second to Damages and Claims Expenses paid by the Underwriters, and third to the Deductible. Any additional amounts recovered shall be paid to the Named Assured.

XVI. EXCLUSION

This Insurance Certificate does not apply to Damages and Claims Expenses in connection with or resulting from any Claim arising from work performed by the following entities: Osmose, Inc; Osmose Railroad Services, Inc; Timber Specialties Co

ALL OTHER TERMS AND CONDITIONS OF THIS CERTIFICATE REMAIN UNCHANGED



Lloyd's Certificate

This Insurance is effected with certain Underwriters at Lloyd's, London.

This Certificate is issued in accordance with the limited authorization granted to the Correspondent by certain Underwriters at Lloyd's, London whose syndicate numbers and the proportions underwritten by them can be ascertained from the office of the said Correspondent (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified herein, Underwriters hereby bind themselves severally and not jointly, each for his own part and not one for another, their Executors and Administrators.

The Assured is requested to read this Certificate, and if it is not correct, return it immediately to the Correspondent for appropriate alteration.

All inquiries regarding this Certificate should be addressed to the following Correspondent:

Miller Insurance Services LLP
Dawson House,
5 Jewry Street,
London EC3N 2PJ.

SLC-3 (USA) NMA2868 (24/08/00) amended.

This Declaration Page is attached to and forms part of
Certificate provisions (SLC-3 USA amended)

Previous No: B0621POSM00213
Authority Ref. No: B0621PFDO11014
Certificate No: B0621POSM00214
Insurance is effective with: Certain UNDERWRITERS AT LLOYD'S, LONDON 100%

Scheduled as follows:

BRT2987	65.0000%
PEM4000	12.5000%
AGM2488	8.3300%
CSL1084	4.5800%
RNR1458	5.4200%
ARK4020	4.1700%

Signed



Dated 9 September 2014

By Andrew Bettis
For the Correspondent

Signed



Dated 9 September 2014

By Adam Martin
For the Correspondent

CERTIFICATE PROVISIONS

- 1. Signature Required.** This Certificate shall not be valid unless signed by the Correspondent.
- 2. Correspondent Not Insurer.** The Correspondent is not an Insurer hereunder and neither is nor shall be liable for any loss or claim whatsoever. The Insurers hereunder are those Underwriters at Lloyd's, London whose syndicate numbers can be ascertained as hereinbefore set forth. As used in this Certificate "Underwriters" shall be deemed to include incorporated as well as unincorporated persons or entities that are Underwriters at Lloyd's, London.
- 3. Assignment.** This Certificate shall not be assigned either in whole or in part without the written consent of the Correspondent endorsed hereon.
- 4. Attached Conditions Incorporated.** This Certificate is made and accepted subject to all the provisions, conditions and warranties set forth herein, attached or endorsed, all of which are to be considered as incorporated herein.
- 5. Complaints.** All complaints must be referred in the first instance to the Coverholder and, if no satisfaction is obtained, complaints can be referred to the Complaints Department, Lloyd's whose address is:

Complaints Department, Lloyd's, One Lime Street, London EC3M 7HA, UK.
Tel. +44 (0)20 7327 1000
www.lloyds.com

Lloyd's is Authorised under the Financial Services and Markets Act 2000 and regulated by the Financial Conduct Authority and the Prudential Regulation Authority, whose addresses are as follows:

Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS
Tel. +44 20 7066 1000
www.fca.org.uk

**EXCESS LIABILITY INSURANCE CERTIFICATE
DECLARATIONS**

**THIS IS A CLAIMS-MADE AND REPORTED EXCESS LIABILITY
INSURANCE CERTIFICATE. PLEASE READ CAREFULLY.**

CERTIFICATE NUMBER: B0621POSM00214

1. Named Assured:

Osrose Utilities Services, Inc.
Osrose Communication Services, LLC
TelPlexus, LLC (former firm)
BBCom, LLC (former firm)
North Star Structural Contractors Ltd

Address:

980 Ellicott Street
Buffalo
New York 14209
USA

2. Period of Insurance:

From: 15th August 2014
To: 1st July 2015
Both dates at 12:01 a.m. Local Standard Time at the above address

3. Limit of Liability:

- (a) USD 2,000,000 Each claim, including costs and expenses incurred in the defense or settlement of such claim.
- (b) USD 2,000,000 Aggregate for the Period of Insurance, including costs and expenses incurred in the defense or settlement of all claims.

4. Primary Policy or Certificate:

Primary Insurer	Underwritten by certain Underwriters at Lloyd's
Policy or Certificate Number	B0621POSM00114
Limit of Liability	USD 1,000,000 Each Claim
	USD 1,000,000 Aggregate
Retention/Deductible	USD 50,000

5. Underlying Policies or Certificates:

None.

6. Premium:

7. Notice of Claim To:

Triton Claims - operated by DCS North America, LLC
740 Waukegan Road, Suite 204
Deerfield, IL 60015
www.dcsglobalclaims.com

8. Claims Reporting Threshold:

0.00% or more of the Underlying Policy or Certificate Limits.

9. Notice of Election:

CRC Insurance Services, Inc
105 West Adams Street
18th Floor
Chicago
IL
USA

10. Service of Suit:

Mendes & Mount LLP
750 Seventh Avenue
New York
NY 10019-6829

11. Choice of law:

New York

Endorsements:

- I. Nuclear Incident Exclusion Clause - Liability - Direct (Broad) - U.S.A.
- II. Radioactive Contamination Exclusion Clause - Liability – Direct - U.S.A.
- III. Application Endorsement
- IV. Several Liability Notice
- V. Sanction and Limitation Exclusion Clause
- VI. War and Terrorism Exclusion Endorsement
- VII. NMA 2840 Retroactive Exclusion
- VIII. No Claims Declaration Endorsement
- IX. ~~Notice of Cancellation Endorsement~~

THE INSURER(S) NAMED HEREIN IS (ARE) NOT LICENSED BY THE STATE OF NEW YORK, NOT SUBJECT TO ITS SUPERVISION, AND IN THE EVENT OF THE INSOLVENCY OF THE INSURER(S), NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE DEPARTMENT OF FINANCIAL SERVICES PERTAINING TO POLICY FORMS

or any Acts being part of an interrelated series of such Acts where any one or more Acts in that series occurred or commenced (or are alleged to have occurred or commenced) prior to the above dates.

27/1/00
NMA2840

VIII. NO CLAIMS DECLARATION ENDORSEMENT

The Named Assured has completed a No Claims Declaration dated: 22nd August 2014 which attaches to and forms part of the Application dated: 2nd May 2014 and this is held on file at the offices of Miller Insurance Services LLP.

IX. NOTICE OF CANCELLATION ENDORSEMENT

In the event that Underwriters cancel this Certificate in accordance with clause **XI. CANCELLATION B.** it is hereby understood and agreed that the

Los Angeles Department of Water & Power
111 N. Hope Street, Room
Los Angeles
CA 90012 and

Crown Castle USA Inc.
Attn: Legal Dept., Contractor Insurance
1500 Corporate Drive
Canonsburg PA 15317

will be provided with a written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective.

ALL OTHER TERMS AND CONDITIONS OF THIS CERTIFICATE REMAIN UNCHANGED



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/21/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER First Niagara Risk Management, Inc 726 Exchange Street Suite 900 Buffalo NY 14210		CONTACT NAME: Christie Geiger PHONE (A/C No. Ext): (716) 819-5500 FAX (A/C No.): (716) 819-5140 E-MAIL ADDRESS: Christie.Geiger@fnrm.com	
INSURED Osmose Utilities Services Inc 980 Ellicott Street Buffalo NY 14209		INSURER(S) AFFORDING COVERAGE INSURER A: Nat'l Union Fire Ins Co of PA NAIC # 19445 INSURER B: Lloyd's of London 15792 INSURER C: American Guarantee & Liability 26247 INSURER D: INSURER E: INSURER F:	

COVERAGES CERTIFICATE NUMBER: 14-15 OUS LAWE REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADJL SUBR	POLICY EFF	POLICY EXP	LIMITS
		INSR WVD	(MM/DD/YYYY)	(MM/DD/YYYY)	
A	GENERAL LIABILITY				EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X	X	7/1/2014	MED EXP (Any one person) \$ 10,000
	<input checked="" type="checkbox"/> Contractual Liability				PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> XCU included				GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COM/POP AGG \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC				\$
A	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$ 3,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	X	X	7/1/2014	PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				\$
	<input type="checkbox"/> NON-OWNED AUTOS				\$
A	UMBRELLA LIAB				EACH OCCURRENCE \$ 50,000,000
	<input checked="" type="checkbox"/> OCCUR	X	X	7/1/2014	AGGREGATE \$ 50,000,000
	EXCESS LIAB				\$
	<input checked="" type="checkbox"/> CLAIMS-MADE				
	RETENTIONS \$ 10,000				
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS OTH-ER
	<input checked="" type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A			E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
					E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liability				per claim/agg 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 The City of Los Angeles, the Board of Water and Power Commissioners of the City of Los Angeles, the Department of Water and Power, their officers, agents, and employees are included as additional insureds as required by written contract regarding work performed by the insured for the certificate holder. Waiver of subrogation applies to the Workers Compensation where required by contract and allowed by law. See attached endorsements.

CERTIFICATE HOLDER (213) 367-0214 Los Angeles Department of Water & Power Risk Management Section P.O. Box 51111, Room 465 Los Angeles, CA 90051-5700	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE M Bonetto/CGEIGE
---	--

EXHIBIT B

SELLING GOODS, WARES, OR MERCHANDISE AT WHOLESALE OR RETAIL

YES NO

1. Are you engaged in business within the City of Los Angeles?

X
(If Yes, (If No,
Answer #2) Answer #3)

You are engaged in business within the City of Los Angeles when, through the physical presence of yourself, your employees, your agents, or your equipment, you carry on activities within the City of Los Angeles which are designed to solicit, promote, stimulate, or otherwise encourage the sale of goods, wares, or merchandise seven (7) or more days per calendar year. This includes the delivery of your merchandise within the City of Los Angeles in vehicles owned and operated by you or your employees.

2. If yes, do you have a valid City of Los Angeles Tax Registration Certificate? _____

Account Number 0002070377-0001-4

If you do not have a valid City of Los Angeles Tax Registration Certificate, please report your City of Los Angeles gross receipts for the previous three calendar years or from the date you began conducting business within the City of Los Angeles.

<u>YEAR</u>	<u>GROSS RECEIPTS</u>
<u>20</u>	\$ _____
<u>20</u>	\$ _____
<u>20</u>	\$ _____

3. If your answer to Question No. 1 is "NO", but you do have customers within the City of Los Angeles, please indicate below the method or methods by which activities in Question No. 1 are accomplished:

YES NO

a. Advertising

b. Telephone orders

c. Bid by mail

d. Independent Commission Brokers/Sales Representative

If method (d) is used, please provide:

Name _____

Address _____

City _____ State _____

Telephone _____

e. Deliveries are made by means other than vehicles operated by you. _____

Signature [Signature]

Title Vice President-Contracts

CONTRACTOR

YES NO

1. Are you engaged in business within the City of Los Angeles?

X
(If Yes, Answer #2) _____
(If No, Answer #3)

You are engaged in business within the City of Los Angeles when, as a contractor or subcontractor, you or your employees undertake any job or project upon land located within the City of Los Angeles including the erection, alteration, improvement, or repair of any type of structure; plumbing, plastering, sheet metal, electrical, cement or tile work; excavating; erection of scaffolding; construction of roads, railroads, pipe lines for seven (7) or more days per calendar year.


2. If yes, do you have a valid City of Los Angeles Tax Registration Certificate? _____

Account Number 0002070377-0001-4

If you do not have a valid City of Los Angeles Tax Registration Certificate, please report your City of Los Angeles gross receipts for the previous three calendar years or from the date you began conducting business within the City of Los Angeles.

<u>YEAR</u>	<u>GROSS RECEIPTS</u>
20 <u> </u>	\$ <u> </u>
20 <u> </u>	\$ <u> </u>
20 <u> </u>	\$ <u> </u>

3. If your answer to Question No. 1 is "NO", but you do have contracts with the City of Los Angeles, please provide the Los Angeles City job site addresses below.

Signature 

Title Vice President-Contracts

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return) Osmose Utilities Services, Inc.	
Business name/disregarded entity name, if different from above	
Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input checked="" type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	Exemptions (see instructions): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____
Address (number, street, and apt. or suite no.) 215 Greencastle Road City, state, and ZIP code Tyrone, Georgia 30290	Requester's name and address (optional) Department of Water and Power of The City of Los Angeles, 111 North Hope Street, L-43 Los Angeles, CA 90012
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								

Employer identification number									
9	5	-	2	1	7	5	3	1	0

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here Signature of U.S. person ▶

Date ▶ **October 28, 2014**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on irs.gov for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

City of Los Angeles
Department of Water and Power
CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT
OBLIGATIONS

This document must be returned with the Proposal/Bid Response

The Undersigned hereby agrees that Osmoste Utilities Services, Inc. will:
Name of Business

1. Fully comply with all applicable State and Federal employment reporting requirements for its employees.
2. Fully comply with and implement all lawfully served Wages and Earnings Assignment Orders and Notices of Assignment.
3. Certify that the principal owner(s) of the business are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally. "Principal owner" means any person who owns an interest of 10 percent or more of the business or of a subcontractor assigned to City work. If there are no principal owners, please so indicate with an X here: X (no principal owners)
4. Certify that the business will maintain compliance with Child Support Obligations Ordinance provisions.

I declare under penalty of perjury that the foregoing is true and was executed at:

Tyrone/Fayette/Georgia

City/County/State


November 3, 2014

Date



Please check if company has already submitted to DWP certification relative to Child Support Obligations Ordinance.

Osmoste Utilities Services, Inc. 215 Greencastle Road, Tyrone, GA 30290
Name of Business Address

 Michael W. Groves, Jr.
Signature of Authorized Officer or Representative Print Name

Vice President-Contracts (770) 632-6700
Title Telephone Number

CITY OF LOS ANGELES

NONDISCRIMINATION • EQUAL EMPLOYMENT PRACTICES CONSTRUCTION & NON-CONSTRUCTION CONTRACTOR

Los Angeles Administrative Code (LAAC), Division 10, Chapter 1, Article 1, Section 10.8 stipulates that the City of Los Angeles, in letting and awarding contracts for the provision to it or on its behalf of goods or services of any kind or nature, intends to deal only with those contractors that comply with the non-discrimination and Affirmative Action provisions of the laws of the United States of America, the State of California and the City of Los Angeles. The City and each of its awarding authorities shall therefore require that any person, firm, corporation, partnership or combination thereof, that contracts with the City for services, materials or supplies, shall not discriminate in any of its hiring or employment practices, shall comply with all provisions pertaining to nondiscrimination in hiring and employment, and shall require Affirmative Action Programs in contracts in accordance with the provisions of the LAAC. The awarding authority and/or Office of Contract Compliance of the Department of Public Works shall monitor and inspect the activities of each such contractor to determine that they are in compliance with the provisions of this chapter.

I. Los Angeles Administrative Code Section 10.8.2 All Contracts: Non-discrimination Clause

Notwithstanding any other provision of any ordinance of the City of Los Angeles to the contrary, every contract which is let, awarded or entered into with or on behalf of the City of Los Angeles, shall contain by insertion therein a provision obligating the contractor in the performance of such contract not to discriminate in his or her employment practices against any employee or applicant for employment because of the applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition. All contractors who enter into such contracts with the City shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with 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.

II. Los Angeles Administrative Code Section 10.8.3. Equal Employment Practices Provisions

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$1,000 or more, and every construction contract for which the consideration is \$1,000 or more, shall contain the following provisions, which shall be designated as the EQUAL EMPLOYMENT PRACTICES provision of such contract:

A. During the performance of this contract, the contractor agrees and represents that it will provide equal employment practices and the contractor and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or service 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 agrees to 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 will, 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, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the City's supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, the contractor shall certify in the specified format that he or she has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. The contractor shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of City contracts. On their or either of their request the contractor shall provide evidence that he or she has or will comply therewith.

E. The failure of any contractor to comply with the Equal Employment Practices provisions of this contract may be deemed to be a material breach of City contracts. Such 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 Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed 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 failed to comply with the Equal Employment Practices provisions of a City contract, the contract may be forthwith canceled, 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, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until the contractor shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

H. The Board of Public Works shall promulgate rules and regulations through the Office of Contract Compliance, and provide necessary forms and required language to the awarding authorities to be included in City Request for Bids or Request for Proposal packages or in supplier registration requirements for the implementation of the Equal Employment Practices provisions of this contract, and such 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 the contract compliance program.

I. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the City, or when an individual bid or proposal is submitted, the contractor shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of City Contracts.

K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

L. All contractors subject to the provisions of this section shall include a like 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.

Equal Employment Practices Provisions Certification – The Contractor by its signature affixed hereto declares under penalty of perjury that:

1. The Contractor has read the Nondiscrimination Clause in Section I above and certifies that it will adhere to the practices in the performance of all contracts.
2. The Contractor has read the Equal Employment Practices Provisions as contained in Section II above and certifies that it will adhere to the practices in the performance of any construction contract or non-construction contract of \$1,000 or more.

Osrose Utilities Services, Inc.

COMPANY NAME

215 Greencastle Road

ADDRESS

Tyrone, Fayette, GA 30290

CITY, COUNTY, STATE, ZIP


AUTHORIZED SIGNATURE

Michael W. Groves, Jr. / Vice President-Contracts

NAME AND TITLE (TYPE OR PRINT)

(770) 632-6700

TELEPHONE/MAIL

CITY OF LOS ANGELES

PLEDGE OF COMPLIANCE WITH CONTRACTOR RESPONSIBILITY

Los Angeles Administrative Code (LAAC) Section 10.40 et seq. (Contractor Responsibility Ordinance) provides that, unless specifically exempt, City contractors working under service contracts of at least \$25,000 and three months, contracts for the purchase of goods and products of at least \$100,000, contracts for the purchase of garments of at least \$25,000, and construction contracts of any amount; public lessees; public licensees; and certain recipients of City financial assistance or City grant funds, shall comply with all applicable provisions of the Ordinance. Upon award of a City contract, public lease, public license, financial assistance or grant, the contractor, public lessee, public licensee, City financial assistance recipient, or grant recipient, and any its subcontractor(s), shall submit this Pledge of Compliance to the awarding authority.

The contractor agrees to comply with the Contractor Responsibility Ordinance and the following provisions:

- (a) To comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
(b) To notify the awarding authority within 30 calendar days after receiving notification that any governmental agency has initiated an investigation which may result in a finding that the contractor did not comply with any federal, state, or local law in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
(c) To notify the awarding authority within 30 calendar days of all findings by a governmental agency or court of competent jurisdiction that the contractor has violated any federal, state, or local law in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees.
(d) If applicable, to provide the awarding authority, within 30 calendar days, updated responses to the Responsibility Questionnaire if any change occurs which would change any response contained within the Responsibility Questionnaire and such change would affect the contractor's fitness and ability to continue the contract.
(e) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
(f) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, sublicensee that perform or assist in performing services on the leased or licensed premises) submit a Pledge of Compliance.
(g) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with paragraphs (b) and (c).

Failure to complete and submit this form to the Awarding Authority may result in withholding of payments by the City Controller, or contract termination.

Osmose Utilities Services, Inc., 215 Greencastle Road, Tyrone, GA 30290, (770) 632-6700

Company Name, Address and Phone Number

[Handwritten Signature]

November 3, 2014

Signature of Officer or Authorized Representative

Date

Michael W. Groves, Jr., Vice-President-Contracts

Print Name and Title of Officer or Authorized Representative

Awarding City Department

Contact Number

**CITY OF LOS ANGELES
RESPONSIBILITY QUESTIONNAIRE**

RESPONSES TO THE QUESTIONS CONTAINED IN THIS QUESTIONNAIRE MUST BE SUBMITTED ON THIS FORM. In responding to the Questionnaire, neither the City form, nor any of the questions contained therein, may be retyped, recreated, modified, altered, or changed in any way, in whole or in part. Bidders or Proposers that submit responses on a form that has been retyped, recreated, modified, altered, or changed in any way shall be deemed non-responsive.

The signatory of this Questionnaire guarantees the truth and accuracy of all statements and answers to the questions herein. Failure to complete and return this questionnaire, any false statements, or failure to answer (a) question(s) when required, may render the bid/proposal non-responsive. All responses must be typewritten or printed in ink. Where an explanation is required or where additional space is needed to explain an answer, use the Responsibility Questionnaire Attachments. Submit the completed form and all attachments to the awarding authority. Retain a copy of this completed form for future reference. Contractors must submit updated information to the awarding authority if changes have occurred that would render any of the responses inaccurate in any way. Updates must be submitted to the awarding authority within 30 days of the change(s).

A. CONTACT INFORMATION

CITY DEPARTMENT INFORMATION

City Department/Division Awarding Contract	City Contact Person	Phone
City Bid or Contract Number (if applicable) and Project Title		

BIDDER/CONTRACTOR INFORMATION

Osmose Utilities Services, Inc.

Bidder/Proposer Business Name			
215 Greencastle Raod	Tyrone	GA	30290
Street Address	City	State	Zip
Michael W. Groves, Jr., Vice President-Contracts	(770) 632-6700	(678) 364-0844	
Contact Person, Title	Phone	Fax	

TYPE OF SUBMISSION:

The Questionnaire being submitted is:

- An initial submission of a completed Questionnaire.
- An update of a prior Questionnaire dated ____/____/____.
- No change. I certify under penalty of perjury under the laws of the State of California that there has been no change to any of the responses since the last Responsibility Questionnaire dated ____/____/____ was submitted by the firm. Attach a copy of that Questionnaire and sign below.

Michael W. Groves, Jr., Vice President-Contracts  November 3, 2014
 Print Name, Title Signature Date

TOTAL NUMBER OF PAGES SUBMITTED, INCLUDING ALL ATTACHMENTS: _____

B. BUSINESS ORGANIZATION/STRUCTURE

Indicate the organizational structure of your firm. "Firm" includes a sole proprietorship, corporation, joint venture, consortium, association, or any combination thereof.

Corporation: Date incorporated: 7 / 23 / 2002 State of incorporation: Delaware

List the corporation's current officers.

President: Larry B Larson

Vice President: Ron A. Childress

Secretary: Charles L. Fincher, Jr.

Treasurer: Elizabeth M. Tommaney (Assistant Treasurer)

Check the box only if your firm is a publicly traded corporation.

List those who own 5% or more of the corporation's stocks. Use Attachment A if more space is needed. Publicly traded corporations need not list the owners of 5% or more of the corporation's stocks.

Limited Liability Company: Date of formation: / / State of formation:

List members who own 5% or more of the company. Use Attachment A if more space is needed.

Partnership: Date formed: / / State of formation:

List all partners in your firm. Use Attachment A if more space is needed.

Sole Proprietorship: Date started: / /

List any firm(s) that you have been associated with as an owner, partner, or officer for the last five years. Use Attachment A if more space is needed. Do not include ownership of stock in a publicly traded company in your response to this question.

Joint Venture: Date formed: / /

List: (1) each firm that is a member of the joint venture and (2) the percentage of ownership the firm will have in the joint venture. Use Attachment A if more space is needed. **Each member of the Joint Venture must complete a separate Questionnaire for the Joint Venture's submission to be considered as responsive to the invitation.**

C. OWNERSHIP AND NAME CHANGES

1. Is your firm a subsidiary, parent, holding company, or affiliate of another firm?

Yes No

If **Yes**, explain on Attachment A the relationship between your firm and the associated firms. Include information about an affiliated firm only if one firm owns 50% or more of another firm, or if an owner, partner or officer of your firm holds a similar position in another firm.

2. Has any of the firm's owners, partners, or officers operated a similar business in the past five years?

Yes No

If **Yes**, list on Attachment A the names and addresses of all such businesses, and the person who operated the business. Include information about a similar business only if an owner, partner or officer of your firm holds a similar position in another firm.

3. Has the firm changed names in the past five years?

Yes No

If **Yes**, list on Attachment A all prior names, addresses, and the dates they were used. Explain the reason for each name change in the last five years.

4. Are any of your firm's licenses held in the name of a corporation or partnership?

Yes No

If **Yes**, list on Attachment A the name of the corporation or partnership that actually holds the license.

Bidders/Contractors must continue on to Section D and answer all remaining questions contained in this Questionnaire.

The responses in this Questionnaire will not be made available to the public for review. This is not a public document. [CPCC §20101(a)]

D. FINANCIAL RESOURCES AND RESPONSIBILITY

5. Is your firm now, or has it ever been at any time in the last five years, the debtor in a bankruptcy case?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

6. Is your company in the process of, or in negotiations toward, being sold?

Yes No

If **Yes**, explain the circumstances on Attachment B.

E. PERFORMANCE HISTORY

7. How many years has your firm been in business? 80 Years.

8. Has your firm ever held any contracts with the City of Los Angeles or any of its departments?

Yes No

If **Yes**, list on an Attachment B all contracts your firm has had with the City of Los Angeles for the last 10 years. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

9. List on Attachment B all contracts your firm has had with any private or governmental entity (other than the City of Los Angeles) over the last five years that are similar to the work to be performed on the contract for which you are bidding or proposing. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

Check the box if you have not had any similar contracts in the last five years

10. In the past five years, has a governmental or private entity or individual terminated your firm's contract prior to completion of the contract?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

11. In the past five years, has your firm used any subcontractor to perform work on a government contract when you knew that the subcontractor had been debarred by a governmental entity?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

12. In the past five years, has your firm been debarred or determined to be a non-responsible bidder or contractor?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

F. DISPUTES

13. In the past five years, has your firm been the defendant in court on a matter related to any of the following issues? For parts (a) and (b) below, check **Yes** even if the matter proceeded to arbitration without court litigation. For part (c), check **Yes** only if the matter proceeded to court litigation. If you answer **Yes** to any of the questions below, explain the circumstances surrounding each instance on Attachment B. You must include the following in your response: the name of the plaintiffs in each court case, the specific causes of action in each case; the date each case was filed; and the disposition/current status of each case.

(a) Payment to subcontractors?

Yes No

(b) Work performance on a contract?

Yes No

(c) Employment-related litigation brought by an employee?

Yes No

14. Does your firm have any outstanding judgements pending against it?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

15. In the past five years, has your firm been assessed liquidated damages on a contract?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance and identify all such projects, the amount assessed and paid, and the name and address of the project owner.

G. COMPLIANCE

16. In the past five years, has your firm or any of its owners, partners or officers, ever been investigated, cited, assessed any penalties, or been found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed on Attachment C (Page 9)? For this question, the term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation.

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance, including the entity that was involved, the dates of such instances, and the outcome.

17. If a license is required to perform any services provided by your firm, in the past five years, has your firm, or any person employed by your firm, been investigated, cited, assessed any penalties, subject to any disciplinary action by a licensing agency, or found to have violated any licensing laws?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance in the last five years.

18. In the past five years, has your firm, any of its owners, partners, or officers, ever been penalized or given a letter of warning by the City of Los Angeles for failing to obtain authorization from the City for the substitution of a Minority-owned (MBE), Women-owned (WBE), or Other (OBE) business enterprise?

Yes No

If Yes, explain on Attachment B the circumstances surrounding each instance in the last five years.

H. BUSINESS INTEGRITY

19. For questions (a), (b), and (c) below, check Yes if the situation applies to your firm. For these questions, the term "firm" includes any owners, partners, or officers in the firm. The term "owner" does not include owners of stock in your firm if the firm is a publicly traded corporation. If you check Yes to any of the questions below, explain on Attachment B the circumstances surrounding each instance.

(a) Is a governmental entity or public utility currently investigating your firm for making (a) false claim(s) or material misrepresentation(s)?

Yes No

(b) In the past five years, has a governmental entity or public utility alleged or determined that your firm made (a) false claim(s) or material misrepresentation(s)?

Yes No

(c) In the past five years, has your firm been convicted or found liable in a civil suit for, making (a) false claim(s) or material misrepresentation(s) to any governmental entity or public utility?

Yes No

20. In the past five years, has your firm or any of its owners or officers been convicted of a crime involving the bidding of a government contract, the awarding of a government contract, the performance of a government contract, or the crime of fraud, theft, embezzlement, perjury, bribery? For this question, the term "owner" does not include those who own stock in a publicly traded corporation.

Yes No

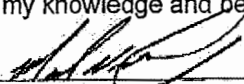
If Yes, explain on Attachment B the circumstances surrounding each instance.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury under the laws of the State of California that I have read and understand the questions contained in this questionnaire and the responses contained on all Attachments. I further certify that I have provided full and complete answers to each question, and that all information provided in response to this Questionnaire is true and accurate to the best of my knowledge and belief.

Michael W. Groves, Jr.

Print Name, Title



Signature

November 3, 2014

Date

ATTACHMENT A FOR SECTIONS A THROUGH C

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Make copies of this Attachment if additional pages are needed.

Page _____

C. OWNERSHIP AND NAME CHANGES

Parent Company

Osmose Holdings, Inc.
980 Ellicott Street
Buffalo, NY 14029

Osmose Utilities Services, Inc. is a wholly-owned subsidiary of Osmose Holdings, Inc.

Operating Subsidiaries Under Osmose Holdings, Inc. (these are affiliates of Osmose Utilities Services, Inc.)

Osmose Utilities Services, Inc.
215 Greencastle Road
Tyrone, Georgia 30290-2944
Phone: (770) 632-6700
Fax: (678) 364-0844

North Star Structural Contractors, Ltd.
35 Crawford Crescent, P.O. Box 520
Campbellville, Ontario L0P 1B0

Osmose Realty Corporation
980 Ellicott Street
Buffalo, NY 14029
Phone: (770) 632-6700
Fax: (678) 364-0844

Tru-Check, Inc.
817 West Columbia Street, Suite 2
Somerset, KY 42501
Phone: (800) 455-5507

Operating Subsidiaries Under Osmose Utilities Services, Inc.

Osmose Communication Services, Inc.
465 West Business Park
Conway, AR 72034
Office: (501) 932-0800
Fax: (501) 932-0804

C. 4. Are any of your firms's licenses held in the name of a corporation or partnership?
Osmose Utilities Services, Inc.

ATTACHMENT B FOR SECTIONS D THROUGH H

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Make copies of this Attachment if additional pages are needed.

Page _____

E. PERFORMANCE HISTORY

8. Has your firm ever held any contracts with the City of Los Angeles or any of its departments?

(a) Entity Name (b) Purpose of Contract (c) Total Cost (d&e) Starting/Ending Date

Department of Water and Power of The City of Los Angeles Contract# 875, Services, Pole Truss, \$458,930.00, June 17, 2008/June 17, 2011.

Department of Water and Power of The City of Los Angeles Contract# 47726-8, Osmose FastGate Gateway Software Maintenance Program, \$248,700, October 2, 2008/October 2, 2014.

Department of Water and Power of The City of Los Angeles Contract# 337, Services, Pole Truss, \$1,063,849.07, October 24, 2012/October 24, 2015.

9. List on Attachment B all contracts your firm has had with any private or governmental entity (other than the City of Los Angeles) over the last five years that are similar to the work to be performed on the contract for which you are bidding or proposing. For each contract listed in response to this question, include:

(a) Entity Name (b) Purpose of Contract (c) Total Cost (d&e) Starting/Ending Date

PacifiCorp, FastGate Software Maintenance, \$1,420,000, 2001-2014 (ongoing)

Indianapolis Power and Light Company, FastGate Software Maintenance,\$339,200, 2002-2009

F. DISPUTES

14.

Osmose is a substantial organization operating throughout the United States. Like any organization of this type in today's litigious society, Osmose is from time to time subject to legal claims and is currently defending several actions. Osmose maintains adequate insurance coverage for most outstanding claims, and any claims not covered by insurance will not, alone or in the aggregate, result in any material adverse effect to the business or financial condition of Osmose.

ATTACHMENT C: GOVERNMENTAL ENTITIES FOR QUESTION NO. 16

Check **Yes** in response to Question No. 16 if your firm or any of its owners, partners or officers, have ever been cited, assessed any penalties, or found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed below (or any of its subdivisions), including but not limited to those examples specified below. The term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation. If you answered **Yes**, provide an explanation on Attachment B of the circumstances surrounding each instance, including the entity involved, the dates of such instances, and the outcome.

FEDERAL ENTITIES

Federal Department of Labor

- American with Disabilities Act
- Immigration Reform and Control Act
- Family Medical Leave Act
- Fair Labor Standards Act
- Davis-Bacon and laws covering wage requirements for federal government contract workers
- Migrant and Seasonal Agricultural Workers Protection Act
- Immigration and Naturalization Act
- Occupational Safety and Health Act
- anti-discrimination provisions applicable to government contractors and subcontractors
- whistleblower protection laws

Federal Department of Justice

- Civil Rights Act
- American with Disabilities Act
- Immigration Reform and Control Act of 1986
- bankruptcy fraud and abuse

Federal Department of Housing and Urban Development (HUD)

- anti-discrimination provisions in federally subsidized/assisted/sponsored housing programs
- prevailing wage requirements applicable to HUD related programs

Federal Environmental Protection Agency

- Environmental Protection Act

National Labor Relations Board

- National Labor Relations Act

Federal Equal Employment Opportunity Commission

- Civil Rights Act
- Equal Pay Act
- Age Discrimination in Employment Act
- Rehabilitation Act
- Americans with Disabilities Act

STATE ENTITIES

California's Department of Industrial Relations

- wage and labor standards, and licensing and registration
- occupational safety and health standards
- workers' compensation self insurance plans
- Workers' Compensation Act
- wage, hour, and working standards for apprentices
- any provision of the California Labor Code

California's Department of Fair Employment and Housing

- California Fair Employment and Housing Act
- Unruh Civil Rights Act
- Ralph Civil Rights Act

California Department of Consumer Affairs

- licensing, registration, and certification requirements
- occupational licensing requirements administered and/or enforced by any of the Department's boards, including the Contractors' State Licensing Board

California's Department of Justice

LOCAL ENTITIES

City of Los Angeles or any of its subdivisions for violations of any law, ordinance, code, rule, or regulation administered and/or enforced by the City, including any letters of warning or sanctions issued by the City of Los Angeles for an unauthorized substitution of subcontractors, or unauthorized reductions in dollar amounts subcontracted.

OTHERS

Any other federal, state, local governmental entity for violation of any other federal, state, or local law or regulation relating to wages, labor, or other terms and conditions of employment.

LWO – EMPLOYEE INFORMATION FORMREQUIRED DOCUMENTATION FOR ALL CONTRACTS SUBJECT TO LWO

This form must be submitted to the **AWARDING DEPARTMENT** within **30 DAYS** of contract execution. **INCOMPLETE SUBMISSIONS WILL BE RETURNED.**

THE LIVING WAGE ORDINANCE (LWO) REQUIRES THAT SUBJECT EMPLOYERS PROVIDE TO EMPLOYEES:

- As of July 1, 2013 a wage of at least \$10.91 per hour with health benefits of \$1.25 per hour, or \$12.16 per hour without health benefits (to be adjusted annually) (Regulation #4);
- At least 12 compensated days off per year for sick leave, vacation or personal necessity at the employee's request (pro-rated for part-time employees) (Regulation #4); and
- At least 10 additional days off per year of uncompensated time off for personal or immediate illness only (pro-rated for part-time employees) (Regulation #4). Refer to the LWO Rules and Regulations, available from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance (OCC) website, for details regarding the wage and benefit requirements of the Ordinance.
- Making less than \$12.00 per hour information of their possible right to the federal Earned Income Tax Credit (EITC) and make available the forms required to secure advance EITC payments from the employer (Regulation #4).

THE LIVING WAGE ORDINANCE (LWO) ALSO REQUIRES EMPLOYERS:

- Not to retaliate against any employee claiming non-compliance with the provisions of these Ordinances and to comply with federal law prohibiting retaliation for union organizing (Regulation #4).

TO BE FILLED OUT BY THE CONTRACTOR:

1. Company Name: Osмосе Utilities Services, Inc. Email Address: osmosesecontracts@osmosese.com
2. STATE the number of employees working ON THIS CITY CONTRACT: _____
3. ****ATTACH** a copy of your company's 1st PAYROLL under THIS CITY CONTRACT.
4. ****INDICATE** (highlight, underline) on the payroll which employees are working ON THIS CITY CONTRACT.
5. ****Do you provide health benefits** (such as medical, dental, vision, mental health, and disability insurance) to your employees? Yes No
If YES, STATE how much, if any, employees pay for co-premiums: \$ _____

****NOTE:** Payroll information need not be submitted if ALL employees working on this City agreement earn an hourly wage of at least \$15 per hour. If so, check the box below.

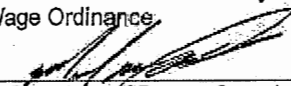
I certify under penalty of perjury that I do not have any employees earning less than \$15 per hour working on this City contract.

FAILURE TO COMPLY WITH THESE REQUIREMENTS WILL RESULT IN WITHHOLDING OF PAYMENTS BY THE CITY CONTROLLER, OR A RECOMMENDATION TO THE AWARDING AUTHORITY FOR CONTRACT TERMINATION. ALL INFORMATION SUBMITTED IS SUBJECT TO VERIFICATION, AND FALSE INFORMATION MAY RESULT IN CONTRACT TERMINATION.

I understand that the employee information provided herein is confidential and will be used by the City of Los Angeles, Office of Contract Compliance for the purpose of monitoring the Living Wage Ordinance.

Michael W. Groves, Jr.

Print Name of Person Completing This Form


Signature of Person Completing This Form

Vice President-Contracts (770) 632-6700

Title

Phone #

11/3/14

Date

AWARDING DEPARTMENT USE ONLY:

Dept: _____ Dept Contact: _____ Contact Phone: _____ Contract #: _____



City Ethics Commission
 200 N Spring Street
 City Hall — 24th Floor
 Los Angeles, CA 90012
 Mail Stop 129
 (213) 978-1960

Bidder Certification CEC Form 50

This form must be submitted to the awarding authority with your bid or proposal for the contract noted below. Please write legibly.

Original filing Amended filing (original signed on _____; last amendment signed on _____)

Bid/Contract/BAVN Number:	Awarding Authority (Department):
---------------------------	----------------------------------

Name of Bidder: Osmose Utilities Services, Inc.	Phone: (770) 632-6700
--	--------------------------

Address: 215 Greencastle Road, Tyrone, GA 30290
--

Email: osmosecontracts@osmose.com

CERTIFICATION

I certify the following on my own behalf or on behalf of the entity named above, which I am authorized to represent:

- A. I am a person or entity that is applying for a contract with the City of Los Angeles.
- B. The contract for which I am applying is an agreement for one of the following:
 - 1. The performance of work or service to the City or the public;
 - 2. The provision of goods, equipment, materials, or supplies;
 - 3. Receipt of a grant of City financial assistance for economic development or job growth, as further described in Los Angeles Administrative Code § 10.40.1(h) [see reverse]; or
 - 4. A public lease or license of City property where both of the following apply, as further described in Los Angeles Administrative Code § 10.37.1(f) [see reverse]:
 - a. I provide services on the City property through employees, sublessees, sublicensees, contractors, or subcontractors, and those services:
 - i. Are provided on premises that are visited frequently by substantial numbers of the public; or
 - ii. Could be provided by City employees if the awarding authority had the resources; or
 - iii. Further the proprietary interests of the City, as determined in writing by the awarding authority.
 - b. I am not eligible for exemption from the City's living wage ordinance, as eligibility is described in Los Angeles Administrative Code § 10.37.1(f)(b).
- C. The value and duration of the contract for which I am applying is one of the following:
 - 1. For goods or services contracts—a value of more than \$25,000 and a term of at least three months;
 - 2. For financial assistance contracts—a value of at least \$100,000 and a term of any duration; or
 - 3. For construction contracts, public leases, or licenses—any value and duration.
- D. I acknowledge and agree to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if I qualify as a lobbying entity under Los Angeles Municipal Code § 48.02.

I certify under penalty of perjury under the laws of the City of Los Angeles and the state of California that the information in this form is true and complete.

Date: November 3, 2014

Signature: 

Name: Michael W. Groves, Jr.

Title: Vice President-Contracts

Los Angeles Administrative Code § 10.40.1

- (h) **"City Financial Assistance Recipient"** means any person who receives from the City discrete financial assistance in the amount of One Hundred Thousand Dollars (\$100,000.00) or more for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation.

Categories of such assistance shall include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

Los Angeles Administrative Code § 10.37.1

(l) **"Public lease or license".**

- (a) Except as provided in (l)(b), "Public lease or license" means a lease or license of City property on which services are rendered by employees of the public lessee or licensee or sublessee or sublicensee, or of a contractor or subcontractor, but only where any of the following applies:
- (1) The services are rendered on premises at least a portion of which is visited by substantial numbers of the public on a frequent basis (including, but not limited to, airport passenger terminals, parking lots, golf courses, recreational facilities); or
 - (2) Any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources; or
 - (3) The DAA has determined in writing that coverage would further the proprietary interests of the City.
- (b) A public lessee or licensee will be exempt from the requirements of this article subject to the following limitations:
- (1) The lessee or licensee has annual gross revenues of less than the annual gross revenue threshold, three hundred fifty thousand dollars (\$350,000), from business conducted on City property;
 - (2) The lessee or licensee employs no more than seven (7) people total in the company on and off City property;
 - (3) To qualify for this exemption, the lessee or licensee must provide proof of its gross revenues and number of people it employs in the company's entire workforce to the awarding authority as required by regulation;
 - (4) Whether annual gross revenues are less than three hundred fifty thousand dollars (\$350,000) shall be determined based on the gross revenues for the last tax year prior to application or such other period as may be established by regulation;
 - (5) The annual gross revenue threshold shall be adjusted annually at the same rate and at the same time as the living wage is adjusted under section 10.37.2 (a);
 - (6) A lessee or licensee shall be deemed to employ no more than seven (7) people if the company's entire workforce worked an average of no more than one thousand two-hundred fourteen (1,214) hours per month for at least three-fourths (3/4) of the time period that the revenue limitation is measured;
 - (7) Public leases and licenses shall be deemed to include public subleases and sublicenses;
 - (8) If a public lease or license has a term of more than two (2) years, the exemption granted pursuant to this section shall expire after two (2) years but shall be renewable in two-year increments upon meeting the requirements therefor at the time of the renewal application or such period established by regulation.

PROPOSER'S NAME, FORM OF BUSINESS ORGANIZATION, AND
SBE CERTIFICATION STATUS

Each principal firm, and/or joint venture partner, involved in the proposal shall furnish the following information:

Name of proposer's business organization:

Osmose Utilities Services, Inc.

Proposer is a Corporation
(Corporation, Joint Venture, Partnership, Limited Partnership,
Individual, or Individual doing-business-as a firm)

If a corporation, the proposer shall state below the names of the President and of the Secretary. If a joint venture, the proposer shall state below the names of each joint venture partner. If a partnership, the proposer shall state below the names of the partners and general partner. The agreement shall be signed by a duly authorized representative on behalf of the single and distinct business organization named above.

President-Larry B. Larson

Secretary-Charles L. Fincher, Jr.

In accordance with the Article titled *Small Business Enterprise (SBE) Participation Program* in SECTION TWO of this RFP, a proposer that is certified as an SBE is eligible to earn credit towards meeting or exceeding the contract-specific mandatory SBE goal for the portion of the contract that will be performed by its own forces.

To be eligible for such credit, the proposer shall indicate its certification status on the table shown below.

Certification Status of Bidder <i>[Check all that apply]</i>	Certification Agency <i>[Check applicable box(es)]</i>
<input type="checkbox"/> Small Business Enterprise (SBE) <input type="checkbox"/> Disadvantaged Business Enterprise (DBE) <input type="checkbox"/> Federal SBA 8(a) <input type="checkbox"/> Minority-owned Business Enterprise (MBE) <input type="checkbox"/> Woman-owned Business Enterprise (WBE) <input type="checkbox"/> Disabled Veteran Business Enterprise (DVBE) <input checked="" type="checkbox"/> None	<input type="checkbox"/> City of Los Angeles for SLB, SBE (LA), and EBE certifications. <input type="checkbox"/> State of California for SB, Micro-Business, and DBE certifications. <input type="checkbox"/> Los Angeles County Metropolitan Transportation Authority for SBE Metro certification. <input type="checkbox"/> Federal SBA 8(a)

Is the Bidder certified as an SBE? No
(Yes or No)

If the answer to the above question is “Yes”, what portion of the contract will be performed by the bidder’s own forces (in percent)?
_____ %

To receive credit as an SBE, a certified bidder shall submit with its bid, a copy or proof of valid certification issued by a certifying agency recognized by the Department and the bidder shall be certified by the time of bid submittal.

APPENDIX J

LIST OF PROPOSED SUBCONTRACTORS

In accordance with the Paragraph titled "Small Business Enterprise (SBE) Participation Program" in Section Two – Supplemental Instructions to Proposers, the proposer shall complete and submit the following table if any subcontractors are proposed under this agreement.

(If the table shown below is left blank, it will be assumed that no subcontractors will be utilized for this procurement)

Name of Subcontractor	Certification Status of Subcontractor (SBE/DBE/WBE/ MBE/ DVBE/OBE)	Description of Work to be Performed	Estimated Dollar Amount of Subcontract
No Subcontractor's will be used			

Proposers are advised to print extra copies of this page if additional subcontractors are to be listed.

City of Los Angeles
Department of Public Works
Bureau of Contract Administration
Office of Contract Compliance
1149 S. Broadway, Suite 300, Los Angeles, CA 90015
Phone: (213) 847-2625 E-mail: bca.eeoe@lacity.org

AFFIRMATIVE ACTION PLAN
NON-CONSTRUCTION CONTRACTOR

The following contracts are subject to the City of Los Angeles Affirmative Action Program as required by the Los Angeles Administrative Code (LAAC) Section 10.8.4 et seq.:

- Every non-construction contract of \$100,000 or more;
- Every construction contract of \$5,000 or more.

Purpose - An affirmative action program is a management tool designed to ensure equal employment opportunity. A central premise underlying affirmative action is that, absent discrimination, over time a contractor's workforce, generally, will reflect the gender, racial and ethnic profile of the available labor pools. Therefore, as part of its affirmative action program, a contractor monitors and examines its employment decisions and compensation systems to ensure equal employment practices, and takes steps to correct underutilization of women and minorities.

Contractors are subject to all provisions contained in LAAC Section 10.8.4 et seq. which can be found at <http://bca.lacity.org>. The excerpts below are provided to serve as a starting point for satisfying these requirements:

LAAC Section 10.8.4 (B) The Contractor will, 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, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

LAAC Section 10.8.4(K) The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract.

LAAC Section 10.8.4(M) The Affirmative Action Plan required to be submitted 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;
6. The entry of qualified women, minority and all other journeymen into the industry; and
7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

LAAC Section 10.8.4(Q) All contractors subject to the provisions of the section shall include a like 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.

CONTRACTOR DECLARATION

In pursuit of accomplishing the intent of the City's Affirmative Action Program, the contractor certifies and agrees to immediately implement good faith efforts, measures to recruit and employ minority, women, and other potential staff in a nondiscriminatory manner including, but not limited to, the following actions. The contractor shall:

- (a) Recruit and make efforts to obtain such employees.
- (b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a nondiscriminatory 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 such training programs to enhance their skills and advancement.
- (d) Maintain such records as are necessary to determine compliance with equal employment and affirmative action obligations, and make such records available to City, State and Federal authorities upon request.
- (e) Said 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.

By its execution hereof, the contractor accepts and submits the foregoing as its Affirmative Action Plan. I certify under penalty of perjury under the laws of the State of California that I have read and understood the foregoing requirements of LAAC Section 10.8 et seq. and agree to comply with them while under contract as set forth therein.

Executed this 3rd day of November, in the year 2014, at Tyrone, GA
(City) (State)

Osmose Utilities Services, Inc.
COMPANY NAME

(770) 632-6700
TELEPHONE/E-MAIL


AUTHORIZED SIGNATURE

215 Greencastle Road
ADDRESS

Michael W. Groves, Jr., Vice President-Contracts
NAME AND TITLE (TYPE OR PRINT)

Tyrone, Fayette, Georgia, 30290
CITY, COUNTY, STATE, ZIP



City Ethics Commission
 200 N Spring Street
 City Hall — 24th Floor
 Los Angeles, CA 90012
 Mail Stop 129
 (213) 978-1960

Prohibited Contributors (Bidders) CEC Form 55

This form must be completed in its entirety and submitted to the awarding authority with your bid or proposal for the contract noted below. A bid or proposal that does not include a completed form will be deemed nonresponsive. Please write legibly.

Original filing Amended filing (original signed on _____; last amendment signed on _____)

Bid/Contract/BAVN Number (or other identifying information if no number):
 RSSP NO. 90248

Date Bid Submitted:
 November 3, 2014

Description of Contract:
 Osmose FastGate Gateway Software Maintenance Program

Awarding Authority (Department):

BIDDER

Name: Osmose Utilities Services, Inc.

Address: 215 Greencastle Road, Tyrone, GA 30290

Email (optional): osmosecontracts@osmsoe.com Phone: (770) 632-6700

State Contractor ID: 855333 (Attached)

State ID must be disclosed for identification purposes, even if not performing work on this contract under that license. If the bidder does not have a state contractor ID, indicate "not applicable".

PRINCIPALS

Please identify the names and titles of all principals (attach additional sheets if necessary). Principals include a bidder's board chair, president, chief executive officer, chief operating officer, and individuals who serve in the functional equivalent of one or more of those positions. Principals also include individuals who hold an ownership interest in the bidder of at least 20 percent and employees of the bidder who are authorized by the bid or proposal to represent the bidder before the City.

Name: See Attached Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

2 additional sheets are attached. Bidder is an individual and no other principals exist.



City Ethics Commission
 200 N Spring Street
 City Hall — 24th Floor
 Los Angeles, CA 90012
 Mail Stop 129
 (213) 978-1960

Prohibited Contributors (Bidders)

CEC Form 55

SUBCONTRACTORS

Please identify all subcontractors whose subcontracts are worth \$100,000 or more (attach additional sheets if necessary). If the subcontractor has a state contractor license, the ID must be disclosed for identification purposes, even if the subcontractor is not performing work on this contract under that license.

Subcontractor: No Subcontractor's will be used

Address: _____

State Contractor ID (for identification purposes; if none, indicate "not applicable"): _____

Subcontractor: _____

Address: _____

State Contractor ID (for identification purposes; if none, indicate "not applicable"): _____

Subcontractor: _____

Address: _____

State Contractor ID (for identification purposes; if none, indicate "not applicable"): _____

Subcontractor: _____

Address: _____

State Contractor ID (for identification purposes; if none, indicate "not applicable"): _____

Subcontractor: _____

Address: _____

State Contractor ID (for identification purposes; if none, indicate "not applicable"): _____

Subcontractor: _____

Address: _____

State Contractor ID (for identification purposes; if none, indicate "not applicable"): _____

Subcontractor: _____

Address: _____

State Contractor ID (for identification purposes; if none, indicate "not applicable"): _____

Subcontractor: _____

Address: _____

State Contractor ID (for identification purposes; if none, indicate "not applicable"): _____

Subcontractor: _____

Address: _____

State Contractor ID (for identification purposes; if none, indicate "not applicable"): _____

_____ additional sheets are attached.

Bidder has no subcontractors on this bid or proposal whose subcontracts are worth \$100,000 or more.



City Ethics Commission
 200 N Spring Street
 City Hall — 24th Floor
 Los Angeles, CA 90012
 Mall Stop 129
 (213) 978-1960

Prohibited Contributors (Bidders) CEC Form 55

PRINCIPALS OF SUBCONTRACTORS

Please identify the names and titles of all principals for each subcontractor identified on page 2 (attach additional sheets if necessary). Principals include a subcontractor's board chair, president, chief executive officer, chief operating officer, and individuals who serve in the functional equivalent of one or more of those positions. Principals also include individuals who hold an ownership interest in the subcontractor of at least 20 percent and employees of the subcontractor who are authorized by the bid or proposal to represent the subcontractor before the City.

Name: N/A Title: _____

Address: _____

Subcontractor: _____

Name: _____ Title: _____

Address: _____

Subcontractor: _____

Name: _____ Title: _____

Address: _____

Subcontractor: _____

Name: _____ Title: _____

Address: _____

Subcontractor: _____

Name: _____ Title: _____

Address: _____

Subcontractor: _____

Of the subcontractors identified on page 2, the following are individuals and no other principals exist (attach additional sheets if necessary):

Subcontractor: _____

Subcontractor: _____

_____ additional sheets are attached.

Bidder has no subcontractors on this bid or proposal whose subcontracts are worth \$100,000 or more.

CERTIFICATION

I certify that I understand, will comply with, and have notified my principals and subcontractors of the requirements and restrictions in Los Angeles City Charter section 470(c)(12) and any related ordinances. I understand that I must amend this form within ten business days if the information above changes. I certify under penalty of perjury under the laws of the City of Los Angeles and the state of California that the information provided above is true and complete.

Date: November 3, 2014

Signature:

Name: Michael W. Groves, Jr.

Title: Vice President-Contracts

Under Los Angeles City Charter § 470(c)(12), this form must be submitted to the awarding authority with your bid or proposal. A bid or proposal that does not include a completed Form 55 will be deemed nonresponsive.



State of California
Department of
Consumer
Affairs

State Of California

CONTRACTORS STATE LICENSE BOARD
ACTIVE LICENSE



License Number **855333**

Entity **CORP**

Business Name **OSMOSE UTILITIES SERVICES
INC**

Classification(s) **A C61/D31**

Expiration Date **03/31/2015**

www.cslb.ca.gov





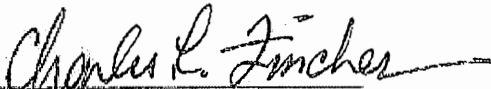
OSMOSE UTILITIES SERVICES, INC. - SECRETARY'S CERTIFICATE

I, Charles L. Fincher, do hereby certify that I am the duly appointed and acting Secretary of Osmose Utilities Services, Inc., a Corporation organized and existing under the laws of the State of Delaware and having a place of business in Tyrone, Georgia (the "Corporation"), and that listed below is a true, accurate, and complete list of the officers of the Corporation as of October 17, 2013. This list of officers has not been amended or modified in any way and remain true, accurate, and complete on the date hereof:

James R. Spengler, Jr.	Chairman
Larry B. Larson	President
Charles L. Fincher, Jr.	Vice President-Finance, Secretary
Michael R. Leach	Assistant Secretary & Assistant Treasurer
Elizabeth M. Tommaney	Assistant Secretary & Assistant Treasurer
Ron A. Childress	Executive Vice President
David R. Hagley	Sr. Vice President-Operations & Contracts
Ian Bresnahan	Sr. Vice President-Business Development & Marketing
Jeffrey R. Giffen	Vice President-Engineering
Nelson G. Bingel, III	Vice President- Product Strategy
Michael W. Groves, Jr.	Vice President-Contracts
Michael R. Dodge	Vice President-Operations Support
Michael Peters	Vice President-Industry Affairs
Kenneth J. Arington	Vice President-North American Operations
Scott K. Wolff	Vice President-North American Operations
Joel K. Rowe	Vice President-North American Operations
Randy C. Marquardt	Vice President-Products
Brett D. Gelband	Vice President- Business Development
David H. Bonk	Vice President- Business Development
Thomas M. Petrik	Vice President- Business Development
Philip J. Halsch	Vice President- Hawaii/Ikaika

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of October, 2013.




Charles L. Fincher
Vice President-Finance, Secretary

IRAN CONTRACTING ACT OF 2010 COMPLIANCE AFFIDAVIT

(California Public Contract Code Sections 2200-2208)

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The Iran Contracting Act prohibits proposers engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A proposer who "engages in investment activities in Iran" is defined as either:

1. A proposer providing goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. A proposer that is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2203(b) as a person engaging in the investment activities in Iran.

The proposer shall certify that at the time of submitting a proposal for new contract or renewal of an existing contract, he or she is **not** identified on the DGS list of ineligible businesses or persons and that the proposer is not engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts (PCC § 2205).

To comply with the Iran Contracting Act of 2010, the proposer shall complete and sign **ONE** of the options shown below.

OPTION #1: CERTIFICATION

I, the official named below, certify that I am duly authorized to execute this certification on behalf of the proposer or financial institution identified below, and that the proposer or financial institution identified below is **not** on the current DGS list of persons engaged in investment activities in Iran and is **not** a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person or vendor, for 45 days or more, if that other person or vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current DGS list of persons engaged in investment activities in Iran.

Name of Proposer/Financial Institution (Printed): Osmose Utilities Services, Inc.

Signed by:  (Authorized Signature)

Michael W. Groves, Jr. (Printed Name)

Vice President-Contracts (Title of Person Signing)

OPTION #2: EXEMPTION

Pursuant to PCC § 2203(c) and (d), a public entity may permit a proposer or financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enter into, or renew, a contract for goods and services. If the proposer or financial institution identified below has obtained an exemption from the certification requirement under the Iran Contracting Act of 2010, the proposer or financial institution shall complete and sign below and attach documentation demonstrating the exemption approval.

Name of Proposer/Financial Institution (Printed): _____

Signed by: _____ (Authorized Signature)

_____ (Printed Name)

_____ (Title of Person Signing)

**APPENDIX T
SAFETY COMPLIANCE CERTIFICATE**

I, Michael W. Groves, Jr. the undersigned,
(Print Company Representative Name)
Vice President-Contracts of
(Print Company Representative Title)
Osmose Utilities Services, Inc. hereby certify the
(Print Company Name)

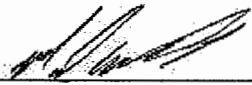
Information contained herein and that undersigned is duly authorized to certify that:

- A. Contractor has an effective Injury and Illness Prevention Program which meets the requirements of all applicable laws and regulations, including, but not limited to, California Labor Code Section 6401.7. (This section does not apply if Contractor does not perform any work under this agreement within the State of California.) and

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=06001-07000&file=6400-6413.5>

- B. Contractor agrees that it is fully responsible for the acts and omissions of its subcontractors and all persons either directly or indirectly employed by Contractor.
- C. The above-named person has the authority and responsibility for implementing and administering Contractor's Injury and Illness Prevention Program.

IN WITNESS WHEREOF, the undersigned has executed this Safety Compliance Certificate under the penalty of perjury of the laws of the State of California on:

Signed:	
Print Name:	Michael W. Groves, Jr.
Date:	November 3, 2014

APPENDIX B

FEE SCHEDULE

Summary of Services to be provided under This Agreement

Services	Fixed Price for 3-year Period	4 One-year Renewable Options	Total
Standard Software Maintenance Services	(1st Year) \$97,300 (2nd Year) \$97,300 (3rd Year) \$97,300	(4th Year) \$97,300 (5th Year) \$97,300 (6th Year) \$97,300 (7th Year) \$97,300	\$681,100
Escrow Services	(1st Year) \$2,200 (2nd Year) \$2,200 (3rd Year) \$2,200	(4th Year) \$2,200 (5th Year) \$2,200 (6th Year) \$2,200 (7th Year) \$2,200	\$15,400
*Proprietary Maintenance Tasks	\$400,000	(4th Year) \$50,000 (5th Year) \$50,000 (6th Year) \$50,000 (7th Year) \$50,000	\$600,000
TOTAL	\$ 698,500	\$ 598,000	\$ 1,296,500

*LADWP has estimated \$400,000 as shown in this Appendix B, Fee Schedule for Proprietary New Software and Upgrades Task. Services under this estimated amount will be issued as Task Orders in accordance with Section 21 ("Task Order Development and Approval") of Section Four Draft Agreement.

"Osrose has utilized our experience of performing this exact service for LADWP over the past seven years as the basis for deriving our proposed pricing. Working closely with LADWP over this period of time has provided Osrose with an intimate knowledge of the detailed requirements of the process and therefore a comprehensive understanding of the level of effort involved."

EXHIBIT G
INVOICE CRITERIA

Los Angeles Department of Water and Power

NOTE: ANY FEE PAYMENTS MADE IN EXCESS OF FEES ACTUALLY OWED TO CONTRACTOR ARE NULL AND VOID, SHALL BE DEDUCTED FROM FUTURE FEE PAYMENTS AND/OR RETENTION, AND MAY RESULT IN LIABILITY FOR DAMAGES FOR PRESENTING FALSE CLAIMS

INVOICE PREPARATION CHECKLIST

ANY "NO" ANSWERS MAY RESULT IN THE DELAY OF PAYMENT

	<u>YES</u>	<u>NO</u>
1. Are you sending your invoice in triplicate to: (unless other specific instructions appear on your Purchase Order [PO])	_____	_____
Accounts Payable Business Unit Los Angeles Department of Water and Power City of Los Angeles PO Box 51211, Room 424 Los Angeles, CA 90051-5511		
<i>(NOTE: Delivery slips and invoices delivered with goods will not initiate payment)</i>		
2. Is your firm's invoice name exactly the same as on the PO/SPO?	_____	_____
3. Does your invoice, delivery slip, credit memo, or correspondence have		
a. Your correct vendor number?	_____	_____
b. The correct PO/SPO number?	_____	_____
c. Your Business Tax Registration Certificate Number or Vendor Registration Number?	_____	_____
4. Have all materials/services been delivered?	_____	_____
5. Do invoice prices and quantities agree with the PO/SPO?	_____	_____
6. Does each billed item indicate the corresponding number on the PO/SPO? (Payment will not be made for any item or charges such as freight, restocking, etc. if not specifically allowed for in the PO.)	_____	_____
7. If freight charges are authorized in the PO, are you, and not the freight company, billing for the charges?	_____	_____

8. Are all taxes stated separately? (DWP is not exempt from payment of sales tax. Out-of-State vendor: Please indicate if California sales/use tax should be paid directly to the State of California.)

9. Is your invoice submitted in accordance with contract terms?

10. Does your invoice number appear on any credit memo?

**EXHIBIT H
PRIOR WORK PRODUCT**

(INTENTIONALLY LEFT BLANK)

EXHIBIT I
RESERVED

EXHIBIT J
SOFTWARE MAINTENANCE

1. "Software Maintenance" shall consist of the following:
 - The LADWP's Designated Employees may, from time to time contact Contractor by telephone or e-mail to consult with Contractor regarding the operation of the Software and any Error.
 - The LADWP's Designated Employees shall provide to Contractor all documentation and related information with respect to each Error, and Contractor shall examine same.
 - Contractor shall use its most diligent efforts to correct such Errors by providing Updates to the Software, and shall provide conforming Software to the LADWP promptly thereafter.
2. Contractor shall make Software Maintenance available during the LADWP's normal business days and normal business hours.
3. For purposes of this **EXHIBIT J ("SOFTWARE MAINTENANCE")**, Errors shall be classified as follows:
 - "**Level 1 Errors**" shall mean Errors which cause a significant impact in the LADWP's ability to deliver water or power to customers.
 - "**Level 2 Errors**" shall mean Errors which cause a significant impact upon the LADWP's information technology system, but does not impair the LADWP's ability to deliver water or power to customers.
 - "**Level 3 Errors**" shall mean Errors which are not Level 1 Errors or Level 2 Errors.
4. Contractor shall use its most diligent efforts to respond to and acknowledge Errors as follows:
 - **Level 1 Errors:** The LADWP shall report Level 1 Errors to Contractor using an external call logging service. Contractor shall use its diligent efforts to respond and acknowledge such notice by telephone, email or fax within four (4) hours of receipt. Contractor will promptly thereafter assemble a team of Contractor engineers to provide corresponding Software Maintenance (and will do so outside of normal business days as necessary), and shall inform the LADWP of the contact information for the leader of such team.
 - **Level 2 Errors:** The LADWP shall report Level 2 Errors to Contractor by email. Contractor shall respond and acknowledge such notice promptly.

- Level 3 Errors: The LADWP shall report Level 3 Errors to Contractor by email. Contractor shall respond and acknowledge such notice promptly.

J.1 Services Statement of Work Summary

J.1.1 Standard Software Maintenance Services

For the Term and any renewal of this Agreement, the Department shall be entitled to Standard Software Maintenance Services described herein.

J.1.1.1 Technical Assistance

Technical assistance shall be performed primarily by telephone and electronic mail from Osmose offices either in Buffalo, NY or Syracuse, NY, USA or if elected by the Department at its sole discretion, at a Department site. Osmose shall provide technical assistance to the Department for problem resolution and to advise the Department on the installation, operation, and maintenance of the software. Osmose will also provide the Department electronic access to technical bulletins and documentation in support of the Trouble(s) resolution.

The Department shall designate no more than five (5) Authorized Customer Representatives, identified in Section J.3, responsible for communicating Troubles to Osmose, and shall designate which of those three is the primary Authorized Customer Representative in the case of ambiguities. The Department shall be responsible for all initial screening and troubleshooting of Troubles prior to contacting Osmose.

J.1.1.2 Trouble Reporting

The Department will have access to a direct web-based trouble reporting system. In addition, the Department will have direct dial phone service to a designated Osmose contact that will accept Trouble Reports and assist the Department with the verification of suspected Trouble(s) and provide solutions for said Trouble(s). The Osmose' contact serves as the primary contact for an associated Trouble Report until its resolution. Osmose support personnel will be available from 8AM to 5PM Eastern Standard Time, Monday through Friday, except for Holidays (hereafter referred to as normal business hours). The Osmose contact shall be responsible for receiving the information and logging it into Osmose' Trouble Tracking System.

A Trouble Report shall be converted to a Problem Report in the event that a trouble event cannot be resolved within a reasonable amount of time (5 days) and such delay has caused a Problem to exist. The Osmose contact managing the initial Trouble Report will be responsible for entering the information into Osmose' Problem Reporting System.

J.1.1.3 Software Updates, Upgrades and New Versions Releases

Osmose shall provide, at no additional cost, when generally made available to the Department, Releases of Updates, Upgrade and/or new Versions of the Software as well as updates to the Documentation, as the case may be.

Osmose shall provide a write-in service for assistance, information and the communication of questions and enhancement suggestions directed to Osmose. A response will be provided by Osmose within a reasonable time.

It is acknowledged and agreed that all the Standard Software Maintenance Services provided by Osmose are strictly remedial and that each intervention hereunder is solely triggered by the Department. Osmose shall have no obligation to provide the Department preventive Standard Software Maintenance Services.

Standard Software Maintenance Services covers all FastGate Gateway licensed components, associated libraries, and all configuration files that Osmose has delivered (or will be delivered) to the Department. Explicitly, these components include, but are not limited, to the following:

- FastGate Gateway
- FastGate Editor Licenses
- FastGate Process Manager Licenses
- 2 FME Professional Suite Licenses
- Specified FastGate modifications from the Department

J.2 Proprietary New Software and Upgrades Tasks

Under this Maintenance Program, Osmose will provide and deliver Proprietary New Software and Upgrade Tasks.

** The FastGate software proposed for this contract is based on proprietary technology and is wholly owned, developed and maintained by Osmose, Inc.

The Proprietary New Software and Upgrades Tasks will entail tasks such as those identified in the following list of services.

1. **FastGate Gateway Software Upgrades** – includes periodic maintenance of FastGate related adaptations, performance tuning of system, and implementation of business process enhancements
2. **Interfacing of FastGate Gateway to External Computer Systems** – related with interfacing to M3i Outage Management System, Intergraph FRAMME/GIS, ECS Historia Gateway, and SCADA/Energy Management System, as a result of FastGate software upgrades or minor revisions to External Computer Systems.
3. **FastGate Gateway Train the Trainer Services** – as due to software upgrades, enhancements and business process improvements.
4. **Proprietary New Software and UpgradeTasks** – Osmose will provide and deliver the following Proprietary New Software and Upgrade Tasks within as defined by Tasks definition. Total Proprietary Tasks over period of Contract. Tasks will be defined in and delivered according to work scope provided in mutually-agreed Task Orders provided by the Department to Osmose (see Exhibit A Section A.4). Payment schedule for the above fixed price services will be based upon payment terms as shown in the fee schedule as part of the Task (see Exhibit A Section A.4).
5. Production Tasks – as needed (A.4, Exhibit A)

J.3 Authorized Representatives

A maximum of five (5) Authorized Department Representatives may contact the Osmose to make inquires regarding standard Software Maintenance Services. Following is a list of three representatives, including telephone numbers, e-mail addresses, fax numbers and any other information that may be required. The Department will notify the Osmose in writing if there are changes in or additions to this representatives list.

1. Name: Sungly Chiu

E-mail: sungly.chiu@ladwp.com

Telephone numbers: (213)367-2797

Fax numbers: (213)367-3592

2. Name: Emil Abdelshehid

E-mail: emil.abdelshehid@ladwp.com

Telephone numbers: (213)367-4841

Fax numbers: (213)367-3592

3. Name: John Litwin

E-mail: john.litwin@ladwp.com

Telephone numbers: (213)367-4005

Fax numbers: (213)367-3592

4. Name: Alex McCarthy

E-mail: alex.mccarthy@ladwp.com

Telephone numbers: (213)367-1729

Fax numbers: (213)367-3592

EXHIBIT K
RIGHT TO AUDIT CLAUSE

1. Right to Audit: Provided the LADWP has executed Contractor's non-disclosure agreement, then the Contractor and the Contractor's subcontractors and suppliers shall be subject at any time with 7 calendar days prior written notice to audits by the Department or the Department's agents, collectively defined as "Authorized Auditors", relating to all billings and to verify compliance with all contract requirements relative to practices, methods, procedures, and documentation. The Authorized Auditors shall have access to all records and data relating to the contract and change orders. The audits will be performed using FAR, Parts 30 and 31, et seq., generally accepted accounting practices and principles, and any other applicable City, State and Federal government audit standards. The Contractor shall maintain and the Authorized Auditors will have the right to examine and audit all books, records, documents, accounting procedures and practices, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all costs claimed to have been incurred or anticipated to be incurred in performing the contract. Any information provided on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. The Contractor shall not, however, be required to furnish the Authorized Auditors with commonly available software. If the Contractor, the Contractor's subcontractors and/or suppliers are required to submit cost or pricing data in connection with the contract and/or the Contract Amendment, the Authorized Auditors will have the right to examine all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. The Authorized Auditors will also have the right to reproduce, photocopy, download, transcribe, and the like any such records. The Contractor shall make said evidence or to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof available to the Authorized Auditors at the Contractor's offices at all reasonable times and without charge.

The Contractor and the Contractor's subcontractors and suppliers shall keep and preserve all records during the performance of the work and under the provision of this contract not less than 4 years past final payment, or until final settlement of all disputes, claims, or litigation, whichever occurs later. In addition, records that relate to the contract, claim, change order, dispute, litigation, or costs or items to which an audit exception has been taken shall be maintained and shall be made available until final payment or final resolution of such dispute, litigation, claim, or exception, whichever occurs later.

The Contractor, the Contractor's subcontractors and suppliers shall account for and be responsible for unallowable costs and mutually agreed unallowable costs. The detail and depth of records required as backup support for proposals, billings, or claims shall be that which adequately establishes and maintains visibility of identified unallowable costs, costs directly associated to unallowable costs, and allowable costs.

The entire contract and all changes are subject to audit. Changes with an absolute value of one hundred thousand (\$100,000) dollars or more shall require an audit. The Department may waive the right to audit where there was adequate price competition, an established catalog or market prices for commercial items sold in substantial quantities to the public, and/or prices set by law or regulation.

The Contractor shall maintain and segregate cost and pricing data, books, records, documents, and any other accounting evidence sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred by a Contract Amendment, including a change order.

For a period of 4 years from the date of Final Payment under the contract, and prior to the execution of any Contract Amendment that exceeds an absolute value of one hundred thousand dollars (\$100,000), the Authorized Auditors will have the right to examine all books, records, documents, and any other applicable data or evidence that relate to the negotiation and/or performance of the contract and/or a Contract Amendment for the purpose of evaluating the accuracy and completeness of the cost or pricing data submitted by the Contractor. To the extent that the examination reveals inaccurate, incomplete, or non-current data, the data shall be considered defective; if the audit indicates the Contractor has been overpaid under a previous payment application, such overpayment, after 10 calendar days notice to the Contractor, shall be paid to the Department. Repayment or crediting by the Contractor, and the Contractor's subcontractors and suppliers, for billing inaccuracies and unallowable costs shall be repaid with a 10% annual interest charge, from the date invoice payment was received by the Contractor from the Department.

The Authorized Auditors may require that the Contractor supply appropriate documentation to support the costs or prices proposed for a Contract Amendment, including a change order, and will refuse to complete negotiations until satisfactory documentation is submitted. The Contractor's books, records, documents and any other applicable data or evidence that relate to the negotiations and/or performance of the Contract Amendment shall be subject to audit and inspection.

Also subject to audit shall be the Contractor's records, books, documents and any other applicable data or evidence relating to those items on a billing that relates to:

- a. Work performed under the contract and/or a change order;
- b. Goods not yet incorporated into the work;
- c. Services or work performed under a contract amendment negotiated on an indefinite quantity basis; and
- d. Fixed-price change orders to validate the claimed percentage of completion on the payment application.

Notwithstanding the foregoing, if the audit reveals that the overpayment is more than 10% of the billing, the Contractor shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the audit.

The Department will have the right to conduct a closeout audit on every contract relating to the entire contract, including but not limited to, any and all change orders.

EXHIBIT L

For Contractors, Service Providers, Vendors, and Tenants

Agreement/Activity/Operation: Req# 112413/RSSP No. 90248 Osmose Fastgateway - Software
Reference/Agreement: _____
Term of Agreement: CERTIFICATE ACCEPTABLE
Contract Administrator and Phone: John Litwin - 74005
Buyer and Phone Number: Hector Lucero - 72619

Contract-required types and amounts of insurance as indicated below by checkmark are the minimum which must be maintained. All limits are Combined Single Limit (Bodily Injury/Property Damage) unless otherwise indicated. Firm 30 day Notice of Cancellation required by Receipted Delivery.

PER OCCURRENCE LIMITS

WORKERS' COMPENSATION(Stat. Limits)/Employer's Liability: (\$1,000,000.00)

- Broad Form All States Endorsement US L&H (Longshore and Harbor Workers)
 Jones Act (Maritime Employment) Outer Continental Shelf
 Waiver of Subrogation Black Lung (Coal Mine Health and Safety)
 Other: _____ Other: _____

AUTOMOBILE LIABILITY: (\$1,000,000.00)

- Owned Autos Any Auto
 Hired Autos Non-Owned Auto
 Contractual Liability Additional Insured
 MCS-90 (US DOT) Trucker's Form
 Waiver of Subrogation Other: _____

GENERAL LIABILITY: Limit Specific to Project Per Project Aggregate (\$1,000,000.00)

- Broad Form Property Damage Contractual Liability Personal Injury
 Premises and Operations Products/Completed Ops. Independent Contractors
 Fire Legal Liability Garagekeepers Legal Liab. Child Abuse/Molestation
 Corporal Punishment Collapse/Underground Explosion Hazard
 Watercraft Liability Pollution Addition Insured Status
 Waiver of Subrogation Airport Premises Hangarkeepers Legal Liab.
 Marine Contractors Liability Other: _____ Other: _____

PROFESSIONAL LIABILITY: ()

- Contractual Liability Waiver of Subrogation 3 Year Discovery Tail
 Additional Insured Vicarious Liability Endt. Other: _____

AIRCRAFT LIABILITY: ()

- Passenger Per Seat Liability Contractual Liability Hull Waiver of Subrogation
 Pollution Additional Insured Other: _____

PROPERTY DAMAGE: Loss Payable Status (AOIMA) ()

- Replacement Value Actual Cash Value Agreed Amount
 All Risk Form Named Perils Form Earthquake: _____
 Builder's Risk:\$_____ Boiler and Machinery Flood: _____
 Transportation Floater:\$_____ Contractors Equipment\$_____ Loss of Rental Income: _____
 Scheduled Locations/Propt. Other: _____ Other: _____

WATERCRAFT: ()

- Protection and Indemnity Pollution Additional Insured
 Waiver of Subrogation Other: _____ Other: _____

POLLUTION: ()

- Incipient/Long Term Sudden and Accidental Additional Insured
 Waiver of Subrogation Contractor's Pollution Other: _____

CRIME: Joint Loss Payable Status Additional Insured ()

- Fidelity Bond: Financial Institution Bond Loss of Monies/Securities
 Employee Dishonesty In Transit Coverage Wire Transfer Fraud
 Computer Fraud Commercial Crime Forgery/Alteration of Docs.
 Other: _____ Other: _____

ASBESTOS LIABILITY: Additional Insured ()

EXHIBIT M
CONFIDENTIALITY AGREEMENT FOR LADWP PROPRIETARY INFORMATION

EXHIBIT M

Confidentiality Agreement for LADWP Proprietary Information

A. Confidentiality

All documents, records, and information provided by LADWP to the Contractor, or accessed or reviewed by the Contractor, during performance of this Agreement shall remain the property of LADWP. All documents, records and information provided by LADWP to the Contractor, or accessed or reviewed by the Contractor during performance of this Agreement, are deemed confidential. The Contractor agrees not to provide these documents and records, nor disclose their content or any information contained in them, either orally or in writing, to any other person or entity. The Contractor agrees that all documents, records, or other information used or reviewed in connection with the Contractor's work for LADWP shall be used only for the purpose of carrying out LADWP business and cannot be used for any other purpose. The Contractor shall be responsible for protecting the confidentiality and maintaining the security of LADWP documents, records, and information in its possession.

B. Document Access/Control

1. The Contractor shall make the confidential information provided by LADWP to the Contractor, or accessed or reviewed by the Contractor during performance of this Agreement, available to its employees, agents and /or subcontractors, only on a need-to-know basis. Further, the Contractor shall provide written instructions to all of its employees, agents and subcontractors, with access to the confidential information about the penalties for its unauthorized use or disclosure.
2. The Contractor shall store and process confidential information in an electronic format in such a way that unauthorized persons cannot retrieve the information by computer, remote terminal or other means.
3. The Contractor shall not remove documents, records, or information used or reviewed in connection with the Contractor's work for LADWP from LADWP facilities without prior approval from LADWP. The Contractor shall not use, other than in direct performance of work required pursuant to the Agreement, or make notes of any home address or home telephone numbers contained in personnel or customer files, confidential information, documents, or records provided by LADWP that are reviewed during work on this Agreement.
4. The Contractor shall not make or retain copies of any such documents, written and electronic materials, notes, documents, confidential information, records, or other information. Provided however, with prior written approval from LADWP, the Contractor may make copies of such documents, written materials, notes, documents, confidential information, or other information, as necessary to perform its duties under this Agreement.
5. The Contractor shall document and immediately report to LADWP any unauthorized use or disclosure of confidential information of which the Contractor becomes aware.

C. Return of All Documents to LADWP

The Contractor shall, at the conclusion of this Agreement or at the request of LADWP, promptly return any and all written materials, notes, documents, records, confidential information, or other information obtained by the Contractor during the course of work under this Agreement to LADWP, and all paper and electronic copies thereof. Provided however, the Contractor may retain duplicates and originals, as appropriate, of Contractor's administrative communications, records, files, and working papers relating to the services provided by the Contractor pursuant to this Agreement.

D. Work Product and Deliverable Confidentiality

Any reports, findings, deliverables, analyses, studies, notes, information or data generated as a result of this Agreement are to be considered confidential. The Contractor shall not make such information available to any individual, agency, or organization except as provided for in this Agreement or as required by law. Notwithstanding the foregoing, the Contractor may reference its work under this Agreement in general terms in presentations and proposals, provided that in doing so, the Contractor does not disclose any non-public information. The Contractor may not release any information, whether or not such information is public information, to the media without prior written approval from LADWP.

E. Subcontractors Subject to the Confidentiality Agreement

Any subcontract entered into pursuant to the terms of this Agreement shall be subject to, and shall incorporate, the provisions of this Confidentiality Agreement.

Bidder has caused their duly authorized representative to execute this Agreement as follows:

Date: December 2, 2014

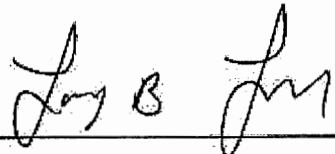
Signature: 
Firm: Osmose Utilities Services, Inc.
Title: Larry Larson
President

EXHIBIT N
EQUAL BENEFITS ORDINANCE - WAIVER

9 | 12658

EXHIBIT N

EBO WAIVER

CITY OF LOS ANGELES
Department of Public Works
Bureau of Contract Administration
Office of Contract Compliance
1149 S. Broadway, 3rd Floor, Los Angeles, CA 90015
Phone: (213) 847-2625 – E-mail: bca.eeoe@lacity.org

EEOE Received
NOV 18 2014

EQUAL BENEFITS ORDINANCE AWARDDING AUTHORITY REQUEST FOR WAIVER

Company Name: Osmose Utilities Services, Inc. BAVN ID #: _____
Company Address: 215 Greencastle Road
City: Tyrone State: GA Zip: 30290 Fed. ID/SS# 35-2175310
Phone: (770) 632-6700
Contract Number (if available): RSSP No. 90248/Contract No. TBD
Contract Term – Start Date: Approx. 1/2015 End Date: Approx. 12/2022
Contract Amount: \$1,296,500
Type of Service: Software maintenance program.

SECTION 1. BASIS FOR REQUEST FOR WAIVER FROM EQUAL BENEFITS ORDINANCE

List all code section(s) on which this request for waiver is based. Cite all sections that may apply.
Los Angeles Administrative Code Section 10.8.2(i)(1)(b).

SECTION 2. REASON FOR WAIVER

Attach a memorandum detailing:

- (1) Why the waiver is being requested.
- (2) The facts and circumstances that support your determination that the contract meets all the criteria required in the code section(s) listed above.
- (3) The steps taken to find an entity that complies with the Equal Benefits Ordinance (EBO).

SECTION 3. SUBMIT REQUEST FOR WAIVER

Submit this request for waiver and all documentation to the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance (OCC) at the address referenced above. The OCC will make a determination within seven (7) working days of receipt of a request for waiver and all supporting documentation.

Name of contact person: Hector Lucero Title: Utility Buyer
Department: Department of Water and Power Phone: (213) 367-2619
Signature: [Signature] Date: November 18, 2014

An approved waiver is valid only for the contract for which it was requested. It is not valid for any other contracts the contractor may have with the City.

FOR OCC USE ONLY	
<input type="checkbox"/> Not Approved. (See attached memorandum for explanation.)	
<input checked="" type="checkbox"/> Approved based on code section(s): <u>Section 10.8.2.1(i)(1)(b) - sole source</u>	
Analyst: <u>[Signature]</u>	Date: <u>11/18/14</u>

EXHIBIT O
ALLOWABLE TRAVEL AND LIVING EXPENSES

The Los Angeles Department of Water and Power (LADWP) will reimburse the Consultant at actual cost, for reasonable, necessary, authorized and approved incidental expenses while performing the work. All expenditures over \$25 require documentation in the form of an original receipt with the exception of per diem meals. Receipts for expenditures under \$25 may be requested by the City Controller.

These expenses will include, but not limited to:

1.0 Air Fare:

Air fare is limited to coach class only. Boarding pass is required in addition to receipt showing payment. An itinerary is not acceptable in and of itself. Original receipts for air fare must be submitted.

2.0 Car Rental:

For car rental, economy size standard, no navigation and no insurance will be reimbursed. Original receipts for car rental must be submitted.

3.0 Per Diem Allowances – Meals:

3.1 A meal allowance rate is established for domestic travel and will include incidental expenses.

3.2 The meal allowance rate for domestic travel is \$60 per day for a full day of travel. On the first and last day of travel, boarding pass and flight itinerary will be required if the full meal rate is requested.

3.3 Meal and incidental allowance will be prorated at 75% (\$45) of the daily allowance as follows:

3.3.1 On the first and last day of travel depending on departure/arrival time:

3.3.1.1 The partial meal rate will be paid on the first day of travel for departure times after 2 pm.

- 3.3.1.2 The partial meal rate will be paid on last day of travel for arrival times prior to 2pm.
- 3.3.1.3 When some meals are provided as part of the conference/event.
- 3.3.1.4 **(NOTE:** No meal allowance will be provided when all meals are provided throughout the day by the host or as part of an event/conference.)
- 3.3.2 The meal allowance rate includes incidental expenses which are defined as:
 - 3.3.2.1 Fees and tips given to porter, baggage carriers, bellhops, hotel maids/servants stewards or flight attendants and others.
 - 3.3.2.2 Transportation in acquiring meals. (This does not include transportation from home to airport or to and from airport to conference location.)

3.4 Meal Receipts

- 3.4.1 Meal receipts are no longer required when claiming the meal allowance. If receipts are provided the actual amount if less than allowance will be reimbursed.
- 3.4.2 **EXCEPTION:** Receipts are required for grant funded travels where the grantor requires complete documentation of travel expenses.

4.0 Per Diem Allowance – Hotel/Lodging:

- 4.1 Zero balance receipt is required. Lodging expenses up to a maximum limit of \$168.81 per day (Los Angeles area) or \$114.00 (Fresno area). This should include taxes and tips. Tips and gratuities shall not exceed 15%, where reasonable and customary.
- 4.2 Find the nearest Destination State/Country: City of lodging.
- 4.3 Meals and lodging are reimbursable only on working days as reported on timesheets, and payments are subject to the approval of the LADWP contract administrator identified in the agreement.

5.0 Mileage for non-rental car travel will be paid at the rate per Department's Administrative Bulletin for Mileage Reimbursement in effect at the time of travel. A Map Quest or similar routing tool is required to document miles driven. The mileage will be calculated using the shortest route. As of January 1, 2014, the reimbursement rate is fifty-six cents (\$0.56) per mile.

No additional mark-up on contractor or subcontractor work will be allowed.