

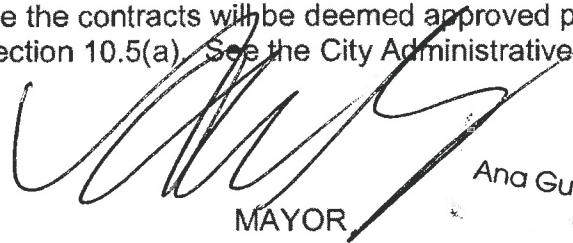
0150-11164-0000

TRANSMITTAL

TO The Council	DATE <i>JUN 28 2018</i>	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT	

**Contracts with Denali Water Solutions, LLC and Nursery Products, LLC
For the Management of Biosolids Generated from the Hyperion Water Reclamation
Plant and Terminal Island Water Reclamation Plant**

Approved and transmitted for your consideration. The Council has 60 days from the date of the receipt to act, otherwise the contracts will be deemed approved pursuant to Los Angeles Administrative Code Section 10.5(a). See the City Administrative Officer report attached.


MAYOR, Ana Guerrero

RHL:WKP:06180158t

Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

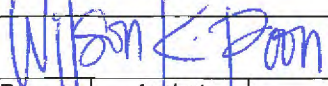
To: The Mayor	Date: 06-28-18	C.D. No. ALL	CAO File No.: 0150-11164-0000				
Contracting Department/Bureau: Public Works/Bureau of Sanitation		Contact: Alan Tran, (310) 648-5995					
Reference: Transmittal from the Board of Public Works dated June 6, 2018; referred for report on June 19, 2018.							
Purpose of Contract: To provide biosolids management through land application and composting.							
Type of Contract: (X) New contract () Amendment, Contract No.		Contract Term Dates: Five years with an option to extend for an additional three years for a cumulative term of eight years.					
Contract/Amendment Amount: \$27,003,246 for Denali Water Solutions, LLC and \$25,671,018 for Nursery Projects, LLC for a total of \$52,674,264 for both contracts.							
Proposed amount \$52,674,264 + Prior award(s) \$0 = Total \$52,674,264							
Source of funds: Sewer Construction and Maintenance Fund.							
Name of Contractor: Denali Water Solutions, LLC Address: 2001 Key Street, Colton, CA 92324							
Name of Contractor: Nursery Products, LLC Address: 435 Williams Court, Suite 100, Baltimore, MD 21220							
	Yes	No	N/A	Contractor has complied with:	Yes	No	N/A
1. Council has approved the purpose	X			8. Business Inclusion Program	X		
2. Appropriated funds are available	X			9. Equal Benefits Ordinance	X		
3. Charter Section 1022 findings completed	X			10. First Source Hiring Ordinance	X		
4. Proposals have been requested	X			11. Contractor Responsibility Ordinance	X		
5. Risk Management review completed	X			12. Slavery Disclosure Ordinance	X		
6. Standard Provisions for City Contracts Included	X			13. Bidder Certification CEC Form 50	X		
7. Workforce that resides in the City: 1% for DWS and 0.3% for NP				14. Prohibited Contributors (Bidders) CEC Form 55	X		
* Applicable to contracts of \$1,000,000 or more				15. CA Iran Contracting Act of 2010*	X		

RECOMMENDATION

That the Council authorize the Board of Public Works, on behalf of the Bureau of Sanitation, to execute the proposed agreements with Denali Water Solutions, LLC and Nursery Products, LLC for the management of the City's biosolids for a term of five years with an option to extend the term for an additional three years, at a cost not to exceed \$27,003,246 and \$25,671,018, respectively.

SUMMARY

In accordance with Executive Directive No. 3, the Board of Public Works (Board), on behalf of the Bureau of Sanitation (Bureau), is requesting authority to execute the proposed Personal Services Contracts with Denali Water Solutions, LLC (DWS) and Nursery Products, LLC (NP) for the management of the City's biosolids. The term of each contract is five years with an option to extend for an additional three years for a cumulative term of eight years. In accordance with Los Angeles Administrative Code Section 10.5(a), Council approval is required to execute the proposed contracts as the cumulative term of the contract exceeds three years. The City Attorney has reviewed and approved the contracts as to form.

	
WKP Analyst 06180158	City Administrative Officer

Introduction

The City's four water reclamation plants treat an average of 325 million gallons of wastewater per day and produce an average of 750 wet tons of per day (wtpd) of biosolids. Biosolids are the nutrient-rich organic materials resulting from the wastewater treatment process and the City is committed to finding alternative ways for beneficially reusing biosolids. The land application of biosolids improves soil properties and stimulates plant growth and approximately 415 wtpd of biosolids are hauled to the City-owned Green Acres Farm in Kern County for land application. Additionally, 95 wtpd are hauled to the Terminal Island Water Reclamation Plant (TIWRP) for deep well injection into abandoned or depleted oil reservoirs to produce methane gas as part of the Terminal Island Renewable Energy (TIRE) project and five wtpd are used for composting at the Griffith Park Composting Facility. The remaining 200 wtpd of biosolids are beneficially used (composting or land application) at alternative sites not owned or operated by the City through City Contract No. C-110634-2 with DWS (formerly Terra Renewal, LLC). This contract will expire on August 11, 2018 and the Bureau is looking to establish a new contract.

Contractor Selection Process

On October 29, 2014, the Board authorized the Bureau to distribute a Request for Proposals (RFP) for biosolids management. The Bureau received six responses and one proposal was determined to be non-responsive for failing to meet the City's Business Inclusion Program requirements. The Bureau evaluated and scored the remaining five proposals based on the following criteria:

- Technical Proposal and Schedule (20 percent)
- Qualification (20 percent)
- Cost Control (40 percent)
- Responsiveness to the RFP (20 percent)

DWS and NP received the two highest scores and on June 6, 2018, the Board approved the Bureau's request to award contracts to DWS and NP for biosolids management.

Scope of Work

The contractors will be responsible for loading, transporting, and unloading biosolids generated at the Hyperion Water Reclamation Plant (HWRP) and TIWRP to its sites and facilities for beneficial use (whether through land application or composting). DWS will also be the primary hauler of biosolids to the TIWRP TIRE project and if DWS is not available, NP will be the backup hauler. The contractors will perform these duties, while complying with the following requirements:

- The contractors shall be capable of receiving biosolids 24 hours per day, seven days per week, and 52 weeks per year and will be responsible for transporting and beneficially using a minimum of 50 wtpd of City biosolids.
- The contractors shall provide and maintain trucks and drivers and any necessary personnel or equipment required to transport biosolids from HWRP and TIWRP to the contractor's site.
- The contractors shall ensure that all trucks used for transporting biosolids are tarped, have watertight sealing tailgates and spillage control, and are equipped with the City approved spill response equipment. The City shall have the right to regularly inspect the contractor's trucks.

- The contractors shall transport biosolids along City approved routes to minimize miles traveled and reduce carbon emissions.
- The contractors shall minimize the total duration that a truck spends at HWRP or TIWRP.
- The contractors shall provide training to all its drivers on plant policies and procedures and the accident spill response plan and the City shall regularly test contractor's drivers on such knowledge.
- The contractors shall submit a spill response plan for approval by the City and the contractors will clean up any biosolids spill that occurs anywhere en route to the contractor's site. Any biosolids spill that occurs on HWRP or TIWRP will be cleaned up by the City.
- The contractors shall maintain all records pertaining to the performance of the contract for a period no less than four years following final payment from the City.

Failure to comply with these requirements will result in liquidated damages in accordance with the provisions in Article 9.3.

Compensation for Services

The contractors will be compensated based on a fixed hauling and tipping fee, which will be annually adjusted by the Consumer Price Index (CPI) with a cap of three percent each year, and a variable fuel adjustment rate. DWS will perform land application of biosolids at Norris Farms and Desert Ridge Farms in Arizona and Baker Ranch Farms in Merced County, CA, and NP will process biosolids at its composting facility in San Bernardino County, CA. The hauling and tipping fees for both contractors are as follows:

Average Daily Tonnage (wtpd)	DWS – Land Application (\$/wet ton)	NP – Composting (\$/wet ton)
0 to 100	\$51.25	\$56.34
101 to 400	\$49.25	\$53.20
Over 401	\$49.25	\$50.95

Both contractors are providing discounted rates for higher daily tonnages delivered to its sites. NP's composting facility is closer to HWRP and TIWRP than DWS's farms in Merced County and Arizona. However, NP's rates are higher as composting is a more expensive option than land application. In accordance with Article 9.2, both contracts also include rates for emergency hauling to backup sites in the event that the City's Green Acre Farm in Kern County is unavailable for land application, hauling and disposal costs for grit and screenings in the event the City's primary contractor is unavailable, hauling biosolids to the TIWRP's TIRE project (DWS contract only), and rates for just composting or land application should the City decide to haul its biosolids to the contractor's sites.

The contracts also include a monthly fuel cost adjustment to capture the fluctuating costs of diesel, which is applied to the rates discussed above. This fuel cost adjustment is based on the average price of diesel per gallon in California according to the U.S. Department of Energy, Energy Information Administration California Retail on-Highway Diesel Price Index. Some months this will reduce the above rates and other months it will increase the rate.

The cost ceilings for both contracts were established as follows:

DWS CONTRACT CEILING	Land Application	Hauling to TIRE	Emergency Hauling	TOTAL
Annual Tons (assumes 125 wtpd for one year for land application and TIRE hauling)	45,625	45,625	6,000	97,250
Hauling and Tip Fee (\$/wet ton)	\$49.25	\$6.95	\$57.25	
Fuel Cost Adjustment (\$/wet ton)	\$2.50	--	\$2.50	
Total Adjusted Cost (\$/wet ton)	\$51.75	\$6.95	\$59.75	
Total Year 1 Costs	\$2,361,094	\$317,094	\$358,500	\$3,036,688
Year 2 – 8 costs include a three percent CPI increase				
Year 2 Costs	\$2,431,927	\$326,607	\$369,255	\$3,127,789
Year 3 Costs	\$2,504,884	\$336,405	\$380,333	\$3,221,622
Year 4 Costs	\$2,580,031	\$346,497	\$391,743	\$3,318,271
Year 5 Costs	\$2,657,432	\$356,892	\$403,495	\$3,417,819
Year 6 Costs (Option)	\$2,737,155	\$367,599	\$415,600	\$3,520,354
Year 7 Costs (Option)	\$2,819,269	\$378,627	\$428,068	\$3,625,964
Year 8 Costs (Option)	\$2,903,847	\$389,985	\$440,910	\$3,734,742
TOTAL	\$20,995,639	\$2,819,706	\$3,187,904	\$27,003,249*

NP CONTRACT CEILING	Composting	Emergency Hauling	TOTAL
Annual Tons (assumes 125 wtpd for one year for composting)	45,625	6,000	51,625
Hauling and Tip Fee (\$/wet ton)	\$53.20	\$53.20	
Fuel Cost Adjustment (\$/wet ton)	\$2.72	\$2.72	
Total Adjusted Cost (\$/wet ton)	\$55.92	\$55.92	
Total Year 1 Costs	\$2,551,350	\$335,520	\$2,886,870
Year 2 – 8 costs include a three percent CPI increase			
Year 2 Costs	\$2,627,891	\$345,586	\$2,973,477
Year 3 Costs	\$2,706,727	\$355,953	\$3,062,680
Year 4 Costs	\$2,787,929	\$366,632	\$3,154,561
Year 5 Costs	\$2,871,567	\$377,631	\$3,249,198
Year 6 Costs (Option)	\$2,957,714	\$388,960	\$3,346,674
Year 7 Costs (Option)	\$3,046,445	\$400,628	\$3,447,073
Year 8 Costs (Option)	\$3,137,839	\$412,647	\$3,550,486
TOTAL	\$22,687,462	\$2,983,557	\$25,671,019*

* As a result of rounding, these amounts differ slightly from the amounts in the contracts.

Funding will be provided from the Sanitation Expense and Equipment Account, a special purpose fund appropriation within the Sewer Construction and Maintenance Fund.

Contracting Compliance Requirements

On June 27, 2018, the Personnel Department determined that City employees cannot perform the work. In addition, both contractors have complied with all City contracting requirements and copies of all compliance documents are attached in the contract appendices.

FISCAL IMPACT STATEMENT

There is no General Fund impact as sufficient funds are available within the Sewer Construction and Maintenance Fund to support the costs of these contracts. The 2018-19 Adopted Budget provides \$14.3 million in the Sanitation Expense and Equipment Account, a special purpose fund appropriation within the Sewer Construction and Maintenance Fund, to support the first year costs of these contracts. Subsequent year funding will be provided through the City's annual budget development process, which is subject to Mayor and Council approval. Consistent with the City's Financial Policies, the contracts include a Financial Liability Clause which limits the City's annual financial obligation to the amount of funding provided in the corresponding year's annual budget.

RHL:WKP:06180158

6/18/CAO

**BOARD OF PUBLIC WORKS
MEMBERS**

KEVIN JAMES
PRESIDENT

HEATHER MARIE REPENNING
VICE PRESIDENT

MICHAEL R. DAVIS
PRESIDENT PRO TEMPORE

JOEL F. JACINTO
COMMISSIONER

AURA GARCIA
COMMISSIONER

CITY OF LOS ANGELES

CALIFORNIA



ERIC GARCETTI
MAYOR

**OFFICE OF THE
BOARD OF PUBLIC WORKS**

DR. FERNANDO CAMPOS
EXECUTIVE OFFICER

200 NORTH SPRING STREET
ROOM 361, CITY HALL
LOS ANGELES, CA 90012

TEL: (213) 978-0261
TDD: (213) 978-2310
FAX: (213) 978-0278

<http://bpw.lacity.org>

June 6, 2018

BPW-2018-0448

Mayor Eric Garcetti
Room No. 305
City Hall
Attn: Mandy Morales

PERSONAL SERVICES CONTRACT – DENALI WATER SOLUTIONS, LLC AND NURSERY PRODUCTS, LLC

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

1. FIND Circle Green to be a non-responsive proposer for failing to meet the requirements of the Business Inclusion Program which was conducted utilizing the Los Angeles Business Assistance Virtual Network;
2. AUTHORIZE the Board of Public Works to execute a contract for a term of five (5) years with one (1) three (3)-year renewal option with Denali Water Solutions, LLC for the City's biosolids management. The ceiling cost for this contract is \$27,003,246 for eight years;
3. REQUEST that the Board be authorized to execute a contract for a term of five (5) years with one (1) three (3)- year renewal option with Nursery Products, LLC (NP) for the City's biosolids management. The ceiling costs for this is \$25,671,018 for eight years.

FISCAL IMPACT

Financing for these contracts will be requested through the Hyperion Water Reclamation Plant (HWRP) budget. There will be no impact to the General Fund as a result of the proposed contract. These contracts will be funded by the Sewer Operations and Maintenance Fund.

Sincerely,

DR. FERNANDO CAMPOS,
Executive Officer, Board of Public Works

FC:jc




BUREAU OF SANITATION
BUREAU OF CONTRACT ADMINISTRATION
JOINT BOARD REPORT NO. 1
JUNE 01, 2018

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

JUN 06 2018

SUBJECT TO THE
CONDITIONS CONTAINED
IN THE REPORT

CD: ALL


Executive Officer
Board of Public Works

AUTHORITY TO EXECUTE PERSONAL SERVICES CONTRACTS WITH DENALI WATER SOLUTIONS, LLC AND NURSERY PRODUCTS, LLC FOR MANAGEMENT OF THE CITY'S BIOSOLIDS SERVICES

RECOMMENDATIONS

1. Find Circle Green to be a non-responsive proposer for failing to meet the requirements of the Business Inclusion Program (BIP) which was conducted utilizing the Los Angeles Business Assistance Virtual Network (LABAVN).
2. Approve and forward this report with transmittals to the Mayor and the City Council with the request that the Board of Public Works (Board) be authorized to execute a contract for a term of five (5) years with one (1) three (3)-year renewal option with Denali Water Solutions, LLC (DWS) for the City's biosolids management. The ceiling cost for this contract is \$27,003,246 for eight years.
3. Approve and forward this report with transmittals to the Mayor and the City Council with the request that the Board be authorized to execute a contract for a term of five (5) years with one (1) three (3)-year renewal option with Nursery Products, LLC (NP) for the City's biosolids management. The ceiling cost for this contract is \$25,671,018 for eight years.
4. Upon the Mayor's and Council's authorization, the President or two (2) members of the Board will execute the contracts; and
5. Return the executed contract agreements to the LA Sanitation (LASAN) for further processing. (Contact the Board Report Section at 213-485-3697 for pick-up).

TRANSMITTALS

1. Copy of LASAN and Bureau of Contract Administration Joint Board Report No. 1, adopted October 29, 2014, authorizing LASAN to distribute a Request for Proposals (RFP) and negotiate contract(s) for the management of the City's biosolids.
2. Copy of the proposed contract with DWS for the City's biosolids management.
3. Copy of the proposed contract with NP for the City's biosolids management.
4. Copy of the letter sent by LASAN's Centralized Contracts Unit (CCU) to Circle Green, dated October 19, 2015, regarding their BIP evaluation.

FISCAL IMPACT STATEMENT

Financing for these contracts will be requested through the Hyperion Water Reclamation Plant (HWRP) budget. There will be no impact to the General Fund as a result of the proposed contract. These contracts will be funded by the Sewer Operations and Maintenance Fund.

DISCUSSION

Background

The City operates four (4) water reclamation plants which treat an average of 325 million gallons of wastewater per day. The treatment of wastewater generates an average of 750 wet tons per day (wtpd) of dewatered digested biosolids (approximately 715 wtpd at HWRP and 35 wtpd at the Terminal Island Water Reclamation Plant (TIWRP). Biosolids are the organic byproduct of wastewater treatment processes, which can be beneficially used. Both HWRP and TIWRP treat their biosolids to conform to the Class A "Exceptional Quality" ("EQ") biosolids standard defined by the U.S. Environmental Protection Agency in the Code of Federal Regulations (CFR), commonly referred to as 40 CFR Part 503. This level of biosolids far exceeds typical Class B standards practiced by the majority of wastewater treatment agencies.

The City is committed to maintaining 100 percent beneficial use of biosolids produced at its water reclamation plants that comply with all federal, state, and local regulations. To meet this commitment, LASAN has adopted a diversified beneficial use biosolids program that incorporates feasible, innovative and cost effective resource recovery options for biosolids. Of the 715 wtpd produced at HWRP, approximately 415 wtpd are land applied at the City-owned Green Acres Farm (GAF) in Kern County, 95 wtpd are hauled to TIWRP for deep well injection, and 5 wtpd are used for composting at the Griffith Park Composting facility. The remaining 200 wtpd is beneficially used (composting and/or land application) at alternative sites not owned or operated by the City through a contract with DWS (Formerly Terra Renewal, LLC, Contract C-110634-2), which will expire on August 11, 2018.

Proposal/Evaluation Process

On October 29, 2014, the Board authorized LASAN to distribute an RFP for the City's biosolids management (Transmittal No. 1). LASAN mailed the RFP notice to potential proposers, and advertised the RFP on LABAVN and in a local newspaper. The RFP pre-proposal meeting was held on January 14, 2015 at HWRP, and eighteen (18) potential proposers attended the meeting.

On March 11, 2015, in response to the advertised RFP, LASAN received six (6) proposals, which were submitted by Circle Green, Titan Trucking and Disposal, DWS, NP, Holloway Environmental, and Anaergia. On October 14 and 15, 2015, five (5) proposers, except Circle Green who failed to pass the Business Inclusion Program evaluation, were invited to make an

BUREAU OF SANITATION
 BUREAU OF CONTRACT ADMINISTRATION
 JOINT BOARD REPORT NO. 1
 JUNE 01, 2018

Page 3 of 9

oral presentation on their proposals before a selection panel composed of staff from HWRP of LASAN.

The proposals were reviewed by the selection panel consisting of City staff and ranked based on the pre-established set of criteria set forth in the RFP. The following is a summary of the scoring results:

Proposer	Technical Proposal and Schedule (20%)	Qualification (20%)	Cost Control (40%)	Responsiveness (20%)	Overall Score (100%)
DWS (OBE)	19.3%	19.7%	38.5%	19.6%	97.1%
NP (OBE)	18.9%	18.9%	32.5%	18.3%	88.6%
Anaergia (OBE)	14.3%	15.9%	36.0%	18.0%	84.2%
Titan Trucking and Disposal (MBE)	16.3%	15.7%	33.3%	18.7%	84.0%
Holloway Environmental, LLC (OBE)	14.0%	17.7%	32.5%	14.0%	78.2%

DWS and NP were the two (2) highest ranked firms out of the five (5) firms and were selected based on the companies' financial strength, locations of facilities, and biosolids management experience. DWS and NP also have extensive experience with hauling and beneficial use of the City's biosolids at sites other than GAF by working with the City through an existing contract (Contract C-110634-2) and Authority of Expenditure agreement, respectively.

DWS and NP will provide the City with various beneficial use sites that could be utilized in the City's Biosolids Diversification Program. They have teamed with experienced and responsive hauling companies that can provide consistently reliable services to accommodate the City's needs on a daily basis and in emergencies. Their biosolids management operations have been inspected and audited according to the National Biosolids Partnership Environmental Management System requirements for better control of City contractors and to ensure that they are using biosolids beneficially in compliance with all applicable regulations and best management practices.

Term of Agreement

The contracts of both DWS and NP will be for a term of five (5) years with one (1), three (3)-year renewal option to be exercised at the City's sole discretion. (Transmittal Nos. 2 and 3)

Business Inclusion Program (BIP) Outreach Requirements

On January 12, 2011, the Mayor issued Executive Directive No. 14 (ED14) which created the Business Inclusion Program (BIP). It is the policy of the City to provide Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Small Business Enterprise (SBE), Emerging Business Enterprise (EBE), Disabled Veteran Business Enterprise (DVBE), and all Other Business Enterprise (OBE) firms an equal opportunity to participate in the performance of all City contracts in accordance with ED14. For this RFP, the City set anticipated participation levels of one percent (1%) MBE, four percent (4%) WBE, one percent (1%) SBE, zero percent (0%) EBE and zero percent (0%) DVBE.

After a detailed review and evaluation by LASAN's CCU of the BIP documentation submitted by the six (6) proposers, CCU found DWS, NP, Anaergia, Titan Trucking and Disposal, and Holloway Environmental, LLC to have successfully completed their BIP outreach requirements. The CCU also determined that Circle Green failed to pass their BIP evaluation, and therefore it is recommending that Circle Green's proposal be deemed non-responsive. On October 19, 2015, CCU emailed a notification to Circle Green regarding their BIP evaluation results (Transmittal No. 4). LASAN did not receive a response from Circle Green.

DWS complied with the BIP outreach requirements of the RFP and pledged participation levels of zero percent (0%) MBE, WBE, SBE, EBE and DVBE, and 36.61% OBE in response to the RFP.

Gender/Ethnicity Codes:

AA = African American	HA = Hispanic American
SAA = Subcontinent Asian American	APA = Asian Pacific American
C = Caucasian	NA = Native American
M = Male	F = Female

Table 1 – Pledged MBE/WBE/SBE/EBE/DVBE/OBE subcontractor utilization for DWS

Subcontractors	MBE/WBE/SBE/EBE/DVBE/OBE	Gender/Ethnicity	% of Contract	Dollar Amount Pledged
ERC Trucking	OBE	-	3.66%	\$ 50,000.00
Clean Waste Trucking	OBE	-	29.29%	\$ 400,000.00
Black's Custom Spreading	OBE	-	3.66%	\$ 50,000.00
Total MBE Participation (per year)			0.00%	\$ 0.00
Total WBE Participation (per year)			0.00%	\$ 0.00
Total SBE Participation (per year)			0.00%	\$ 0.00
Total EBE Participation (per year)			0.00%	\$ 0.00
Total DVBE Participation (per year)			0.00%	\$ 0.00

BUREAU OF SANITATION
 BUREAU OF CONTRACT ADMINISTRATION
 JOINT BOARD REPORT NO. 1
 JUNE 01, 2018

Page 5 of 9

Subcontractors	MBE/WBE/SBE/ EBE/DVBE/OBE	Gender/ Ethnicity	% of Contract	Dollar Amount Pledged
Total OBE Participation (per year)			36.61%	\$ 500,000.00
Total Contract Amount (per year)*				\$ 1,365,574.00

Note:

(*) This is only an estimation based on services provided by Contractor under previous contract.

NP complied with the BIP outreach requirements of the RFP and pledged participation levels of zero percent (0%) MBE, WBE, SBE, EBE and DVBE. In the RFP and during the pre-proposal meeting, LASAN staff informed the prospective proposers that the City intends to select one or more qualified proposers to work on this project. Therefore, NP could not project the tonnage of biosolids that would be given to them if selected, and subsequently noted the subcontractor utilization and Total Contract Amount as To Be Determined (TBD) on their Schedule A.

Table 2: Pledged MBE/WBE/SBE/EBE/DVBE/OBE subcontractor utilization for NP

Subcontractors	MBE/WBE/SBE/ EBE/DVBE/OBE	Gender/ Ethnicity	% of Contract	Dollar Amount Pledged
GIC Transport	OBE	-	% TBD	TBD
Denali Water Solutions	OBE	-	% TBD	TBD
Total MBE Participation (per year)			0.00%	\$ 0.00
Total WBE Participation (per year)			0.00%	\$ 0.00
Total SBE Participation (per year)			0.00%	\$ 0.00
Total EBE Participation (per year)			0.00%	\$ 0.00
Total DVBE Participation (per year)			0.00%	\$ 0.00
Total OBE Participation (per year)			% TBD	TBD
Total MBE/WBE/SBE/EBE/DVBE/OBE Participation (per year)			% TBD	TBD
Total Contract Amount (per year)				TBD

Both DWS and NP have been encouraged and have agreed to continue performing additional MBE/WBE/SBE/EBE/DVBE/OBE subcontractor outreach efforts during the contract term.

Notification of Intent to Contract

The Notification of Intent to Contract was filed with the CAO Clearinghouse on May 2, 2013.

Page 6 of 9

Charter Section 1022

The CAO made a Charter 1022 Determination on June 10, 2009 and concluded that there was an insufficient number of City staff that could perform these services. Per CAO, this Charter 1022 Determination is still valid for these agreements.

Approved as to Form

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

Other Policies and Requirements

DWS and NP shall be required to comply with all of the City's requirements including:

- Nondiscrimination/Equal Employment Practices/Affirmative Action
- Living Wage and Worker Retention Ordinances
- Americans with Disabilities Act
- Insurance and Performance Bond Requirements
- Child Support Obligations Ordinance
- Business Tax Registration Certificate
- Equal Benefits Ordinance
- Slavery Disclosure Ordinance
- Municipal Lobbying Ordinance
- Non-collusion Affidavit
- City of Los Angeles Contract History
- Los Angeles Residence Information
- First Source Hiring Ordinance
- Contract Bidder Campaign Contribution and Fundraising Restrictions
- Iran Contracting Act of 2010
- Fair Chance Initiative for Hiring Ordinance

Local Business Preference (LBP) Program

All Proposers were eligible to participate in the LBP Program by qualifying as a Local Business Enterprise (LBE). The City shall grant eight percent (8%) of the total possible evaluation points added to their evaluation score to those Proposers who are certified as an LBE firm. Those Proposers who do not qualify as an LBE, but identify qualified LBE-certified subcontractors to perform work under this RFP, would receive a one percent (1%) preference, up to a maximum of five percent (5%), of the total possible evaluation points added to their evaluation score for every ten percent (10%) of the cost of the proposed work to be performed by certified LBE subcontractors.

The LBP Program, which was established by Ordinance No. 181910, did not have any bearing on the evaluation as none of the proposers were certified local businesses. Therefore, no additional points were applied during the evaluation process.

Contractor Responsibility Ordinance

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

Contractor Performance Evaluation

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

Contract Administration

Responsibility for administration of these contracts will be with the HWRP Division, LASAN.

Headquarters Address and Workforce Information

Denali Water Solutions, LLC

The headquarters address of DWS is 3308 Bernice Avenue, Russellville, Arkansas 72802. Their local office is located at 2001 Key Street, Colton, California 92324. The contractor has a staff of five employees assigned to this contract, one of whom resides in the City of Los Angeles.

Nursery Products, LLC

The headquarters address of NP is 435 Williams Court, Suite 100, Baltimore, Maryland 21220. The contractor has a staff of nineteen (19) employees assigned to this contract, three of whom reside in the City of Los Angeles.

STATUS OF FINANCING

There is no impact to the General Fund. Funding will be provided by the Sewer Operations and Maintenance Fund as shown below. Funds and Appropriations for future fiscal years are not yet identified and existing appropriations may change based on available cash balances. Therefore, Funds and Appropriations will be determined by the Director of Sanitation or designee.

Fiscal Year	Denali Estimate	Nursery Products Estimate
2018-19	\$3,036,688	\$2,886,870
2019-20	\$3,127,788	\$2,973,476
2020-21	\$3,221,622	\$3,062,680
2021-22	\$3,318,270	\$3,154,560

BUREAU OF SANITATION
BUREAU OF CONTRACT ADMINISTRATION
JOINT BOARD REPORT NO. 1
JUNE 01, 2018

Page 8 of 9

Fiscal Year	Denali Estimate	Nursery Products Estimate
2022-23	\$3,417,819	\$3,249,198
2023-24 (renewal option)	\$3,520,353	\$3,346,674
2024-25 (renewal option)	\$3,625,964	\$3,447,074
2025-26 (renewal option)	\$3,734,743	\$3,550,486
Total	\$27,003,246	\$25,671,018

*These amounts are estimates for each year and should not be considered annual caps.

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for the City to comply with its governing legal requirements, the City shall have no obligation to make any payments to the Contractor unless the City shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract.

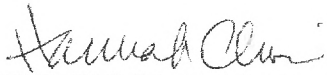
The Contractor agrees that any services provided by the Contractor, purchases made by the Contractor or expenses incurred by the Contractor in excess of the appropriation(s) shall be free and without charge to the City and the City shall have no obligation to pay for the services, purchases or expenses.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

BUREAU OF SANITATION
BUREAU OF CONTRACT ADMINISTRATION
JOINT BOARD REPORT NO. 1
JUNE 01, 2018

Page 9 of 9

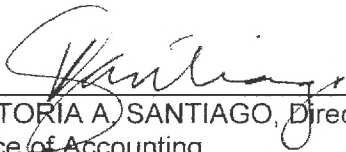
(EEA SHK TD TM)

COMPLIANCE REVIEW PERFORMED
AND APPROVED BY:

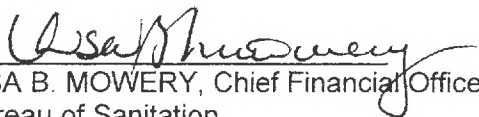


HANNAH CHOI, Assistant Director
Bureau of Contract Administration

APPROVED AS TO FUNDS:



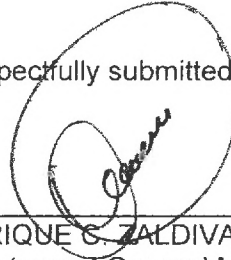
VICTORIA A. SANTIAGO, Director
Office of Accounting



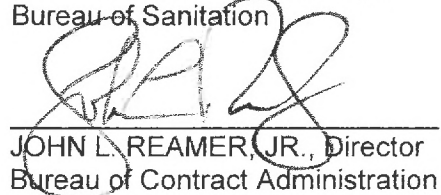
LISA B. MOWERY, Chief Financial Officer
Bureau of Sanitation

Prepared by:
Alan Tran, HWRP
(310) 648-5995

Respectfully submitted,



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



JOHN L. REAMER, JR., Director
Bureau of Contract Administration

CONTRACT NO. C - _____

SERVICE AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES
AND
DENALI WATER SOLUTIONS, LLC.
FOR
THE CITY'S BIOSOLIDS MANAGEMENT

**Hyperion Water Reclamation Plant
12000 Vista Del Mar
Playa Del Rey, CA 90293**

INDEX TO

AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND DENALI WATER SOLUTIONS, LLC. FOR THE CITY BIOSOLIDS MANAGEMENT

ARTICLE 1 - SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN.....	5
ARTICLE 2 - DEFINITIONS.....	5
ARTICLE 3 - PROJECT DESCRIPTION.....	8
ARTICLE 4 - RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CONTRACTOR.....	9
ARTICLE 5 - RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY	14
ARTICLE 6 - KEY CONTRACTOR PERSONNEL.....	16
ARTICLE 7 - TERM OF AGREEMENT.....	16
ARTICLE 8 - TERMINATION.....	17
ARTICLE 9 - COMPENSATION, INVOICING AND PAYMENT.....	18
ARTICLE 10 - AMENDMENTS, CHANGES OR MODIFICATIONS.....	25
ARTICLE 11 - INDEMNIFICATION AND INSURANCE.....	26
ARTICLE 12 - INDEPENDENT CONTRACTOR.....	27
ARTICLE 13 - WARRANTIES AND RESPONSIBILITY OF CONTRACTOR.....	27
ARTICLE 14 - SUBCONTRACT APPROVAL.....	28
ARTICLE 15 - NONDISCRIMINATION.....	28
ARTICLE 16 - SUCCESSORS AND ASSIGNS.....	29
ARTICLE 17 - CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION....	29
ARTICLE 18 - OWNERSHIP AND LICENSE.....	29
ARTICLE 19 - FORCE MAJEURE.....	30
ARTICLE 20 - SEVERABILITY.....	31
ARTICLE 21 - DISPUTES.....	31
ARTICLE 22 - ENTIRE AGREEMENT.....	31
ARTICLE 23 - INTELLECTUAL PROPERTY INDEMNIFICATION.....	31
ARTICLE 24 - INTELLECTUAL PROPERTY WARRANTY.....	32
ARTICLE 25 - APPLICABLE LAW, INTERPRETATION AND LAW ENFORCEMENT	32
ARTICLE 26 - EQUAL EMPLOYMENT PRACTICES.....	32
ARTICLE 27 - AFFIRMATIVE ACTION PROGRAM.....	34
ARTICLE 28 - CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE.....	39
ARTICLE 29 - CHILD SUPPORT OBLIGATIONS ASSIGNMENT ORDERS.....	39
ARTICLE 30 - WORKER RETENTION ORDINANCE/ LIVING WAGE ORDINANCE..	40
ARTICLE 31 - AMERICANS WITH DISABILITIES ACT.....	41
ARTICLE 32 - LOS ANGELES BUSINESS INCLUSION PROGRAM.....	42
ARTICLE 33 - EQUAL BENEFITS ORDINANCE.....	42
ARTICLE 34 - SLAVERY DISCLOSURE ORDINANCE.....	43
ARTICLE 35 - WAIVER.....	43
ARTICLE 36 - PROHIBITION AGAINST ASSIGNMENT OR DELEGATION.....	43
ARTICLE 37 - DISCOUNT TERMS.....	44

ARTICLE 38 - CONTRACTOR PERFORMANCE EVALUATION	44
ARTICLE 39 - CONTRACTOR RESPONSIBILITY ORDINANCE	44
ARTICLE 40 - BREACH	45
ARTICLE 41 - PERMITS	45
ARTICLE 42 - CLAIMS FOR LABOR AND MATERIALS	45
ARTICLE 43 - MUNICIPAL LOBBYING ORDINANCE	45
ARTICLE 44 - FIRST SOURCE HIRING ORDINANCE.....	46
ARTICLE 45 - COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470 (c)(12).....	47
ARTICLE 46 - COMPLIANCE WITH THE IRAN CONTRACTING ACT OF 2010.....	47

LIST OF ATTACHMENTS

Attachment 1	Contractor Responsibility Ordinance
Attachment 2	BTRC Notice and Application Form
Attachment 3	Insurance Requirement Package
Attachment 4	Equal Benefits Ordinance
Attachment 5	City of Los Angeles Contract History Form
Attachment 6	Business Inclusion Program
Attachment 7	Worker Retention Ordinance/Living Wage Ordinance
Attachment 8	Slavery Disclosure Ordinance
Attachment 9	Los Angeles Residence Information Form
Attachment 10	Non Collusion Affidavit
Attachment 11	Municipal Lobbying Ordinance/Contract Bidder Certification of Compliance Form
Attachment 12	First Source Hiring Ordinance
Attachment 13	Contract Bidder Campaign Contribution and Fundraising Restrictions
Attachment 14	Iran Contracting Act of 2010 Compliance Affidavit
Attachment 15	CITY's Biosolids Environmental Management System (EMS)

AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND DENALI WATER SOLUTIONS, LLC. FOR THE CITY BIOSOLIDS MANAGEMENT

This AGREEMENT, made and entered into by and between the City of Los Angeles, a municipal corporation, acting by order of and through its Board of Public Works (hereinafter referred to as the "CITY") and DENALI WATER SOLUTIONS, LLC. (DWS) (hereinafter referred to as "CONTRACTOR"), is set forth as follows:

WITNESSETH

WHEREAS, the CITY currently produces approximately 750 wet tons per day of biosolids at its Hyperion and Terminal Island water reclamation plants; and

WHEREAS, biosolids are a nutrient rich organic material, generated in the treatment of wastewater, that can be beneficially used; and

WHEREAS, the CITY's biosolids are known to contain nitrogen and other nutrients making it rich in organic matter and thereby making it a highly desirable soil amendment; and

WHEREAS, the CITY's biosolids meet U.S. EPA's regulations and state guidelines for composting, land application, and other beneficial uses; and

WHEREAS, the CITY is committed to finding innovative and creative means of beneficially using its biosolids; and

WHEREAS, the current contract (C-110634-2) for the CITY's biosolids management will expire on August 12, 2018; and

WHEREAS, on October 29, 2014, the Board of Public Works authorized the Bureau of Sanitation (LA Sanitation) to distribute a Request for Proposals (RFP) for the CITY's biosolids management and to negotiate a contract with qualified proposer(s); and

WHEREAS, on March 11, 2015, LA Sanitation received six (6) proposals in response to the RFP for the CITY's biosolids management; and

WHEREAS, the CONTRACTOR was deemed the most qualified proposer with the best experience and expertise to perform said services as determined by CITY staff based on the evaluation criteria set forth in the RFP; and

WHEREAS, the CONTRACTOR has extensive experience in managing and beneficially using biosolids; and

WHEREAS, the CONTRACTOR has offered to beneficially use the CITY's biosolids by means of land application at the CONTRACTOR's permitted land application and/or

composting sites in Merced and San Bernardino Counties in California, Yuma County in Arizona and other sites as mutually agreed upon in writing; and

WHEREAS, the CONTRACTOR has agreed to perform the above-referenced tasks in an environmentally sound manner in accordance with all applicable laws, regulations, rules and other requirements of local, state and federal governments; and

WHEREAS, the term of this AGREEMENT is for five (5) years with one (1), three (3)-year renewal option and the ceiling cost for all the fees and services identified in this AGREEMENT is \$27,003,246; and

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

NOW, THEREFORE, in consideration of the promises, covenants, and AGREEMENTs hereinafter set forth, the parties hereby agree as follows:

ARTICLE 1 - SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, and/or section headings appearing herein have been inserted for convenience and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, intent or construction of any of the terms or provisions hereof. The language of this CONTRACT shall be construed according to its fair meaning and not strictly for or against the CITY or the CONTRACTOR. The singular shall include the plural; use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used. The terms "include" and "including" do not exclude items not enumerated that are in the same general class.

ARTICLE 2 - DEFINITIONS

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

AGREEMENT or CONTRACT This AGREEMENT between the CITY and CONTRACTOR for the City Biosolids Management

APPLICABLE LAW	All statutes, rules, regulations, permits, orders, or requirements of the United States, State of California, CITY, County of Los Angeles, and all regional, county, and local government authorities and agencies having applicable jurisdiction, that apply to or govern the facility, the site, or the performance of the CONTRACTOR'S and CITY'S respective obligations under this CONTRACT.
BIOSOLIDS	Digested sewage sludge which can be beneficially recycled and normally consisting of 15% to 35% solids content.
BOARD	The Board of Public Works of the City of Los Angeles.
CALENDAR DAY	Each day beginning at 12:01 AM and ending twenty-four (24) hours thereafter at 12:00 midnight
Certified Weigh Station	Weighing Station certified by the State of California Department of Food and Agriculture Division of Measurement Standards, the Los Angeles County Department of Weights and Measures as applicable, and/or any other applicable entity having jurisdiction.
CITY	The City of Los Angeles, Board of Public Works or its subordinate bureaus. Depending on the context in which it is used, the term CITY may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles who is authorized to represent the City of Los Angeles in manners concerning this document.
CITY PROJECT MANAGER	CITY's designated representative for all issues related to this AGREEMENT.
CONTRACTOR	Denali Water Solutions, LLC. (DWS)
CONTRACTOR PROJECT MANAGER	CONTRACTOR's representative for all issues related to this AGREEMENT.

Grit and Screenings	Materials composed of inorganic and organic non-hazardous materials captured by mechanical or hydraulic methods from the HWRP and TIWRP locations.
Gross Weight	The weight of the collection vehicle or other container including any loaded material
Holidays	New Year's Day, Independence Day, Labor Day, Thanksgiving, Christmas and other holidays officially designated and observed as such by the CITY
HWRP	City of Los Angeles Hyperion Water Reclamation Plant 12000 Vista Del Mar Playa Del Rey, CA 90293
LA Sanitation	The Bureau of Sanitation of the City of Los Angeles
MBE/WBE/SBE/EBE/DVBE/OBE	Minority/Women/Small/Emerging/Disabled Veteran/Other Business Enterprise
OPERATING DAYS	Any CALENDAR DAY for which CONTRACTOR is obligated, pursuant to this AGREEMENT, to manage the CITY's BIOSOLIDS.
PERMITS	All federal, State of California, local or any other pertinent governmental unit permits, orders, licenses, and approvals required by APPLICABLE LAW (including, but not limited to, California Environmental Quality Act (CEQA)), for the modifications, operations and maintenance of the beneficial use site.
Project, Project Services	The beneficial use of BIOSOLIDS in accordance with all applicable permits, environmental laws, and CITY approvals.
SERVICE FEE	Has the meaning specified in Section 9.1 of ARTICLE 9, hereof.
SITE	The site used by Denali Water Solutions, LLC. to beneficially use the CITY's BIOSOLIDS.

SUBCONTRACTOR	An individual or company having an agreement with CONTRACTOR to provide services, equipment, or materials to CONTRACTOR
Tare Weight	The weight of an empty collection vehicle or container. Tare Weight is deducted from Gross Weight to obtain the net weight or gross tons of the delivered materials
TIWRP	Terminal Island Water Reclamation Plant 445 Ferry Street San Pedro, CA 90731
TRUCK	Tractor and trailer
Wet Ton	2000 pounds
Wtpd	Wet tons per day

ARTICLE 3 - PROJECT DESCRIPTION

The project shall consist of the following:

- 3.1 The loading of BIOSOLIDS generated at HWRP and TIWRP by the CITY onto CONTRACTOR's trucks for transport to CONTRACTOR's SITE(s);
- 3.2 The transportation of the BIOSOLIDS by CONTRACTOR from HWRP and TIWRP to CONTRACTOR's SITE(s);
- 3.3 The unloading of the BIOSOLIDS from CONTRACTOR's transport trucks at CONTRACTOR's SITE(s);
- 3.4 The beneficial use of the BIOSOLIDS by CONTRACTOR at CONTRACTOR's SITE(s), through land application, composting and other technologies approved by the CITY;
- 3.5 The loading by the CITY and by CONTRACTOR and transporting and unloading of BIOSOLIDS, grit and screenings, by CONTRACTOR from HWRP and TIWRP, in case of emergency to sites, as designated by the CITY;
- 3.6 The monitoring, documenting, reporting by CONTRACTOR of all project-related activities performed by CONTRACTOR;
- 3.7 The loading, transporting, and unloading of the BIOSOLIDS by CONTRACTOR from HWRP to Terminal Island Renewable Energy (TIRE) project's site.

ARTICLE 4 - RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CONTRACTOR

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

- 4.1 CONTRACTOR shall perform the services described in Article 4.6. CONTRACTOR shall perform such work with a degree of skill and diligence normally employed by professional analysts or contractors performing the same or similar services.
- 4.2 CONTRACTOR warrants that the services will be performed consistent with generally accepted industry standards.
- 4.3 CONTRACTOR shall maintain all records, in their original form, pertaining to the performance of this CONTRACT, including records of financial transactions. These records shall be retained for a period of no less than four (4) years following final payment made by the CITY hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized CITY personnel or by the CITY'S representative at any time during the term of this CONTRACT and within the four (4) years following final payment made by the CITY hereunder or the expiration date of this CONTRACT, whichever occurs last. CONTRACTOR shall provide any reports requested by the CITY regarding performance of this Contract within thirty (30) business days of the request by the CITY. Any subcontract entered into by CONTRACTOR, as authorized under the terms of this CONTRACT, shall include a like provision for work to be performed under this CONTRACT.
- 4.4 CONTRACTOR shall assume full title to and complete responsibility for all BIOSOLIDS from the time they are loaded onto the CONTRACTOR' transport trucks at HWRP or TIWRP. BIOSOLIDS transported by the CITY certified vehicles other than the CONTRACTOR' vehicles shall become the CONTRACTOR's responsibility from the time they are unloaded at the CONTRACTOR's SITE. BIOSOLIDS transported by the CONTRACTOR in accordance with Section 4.6.2 shall become the CONTRACTOR's responsibility from the time they are loaded onto the CONTRACTOR's transport trucks to the time they are unloaded at the site designated by the CITY.
- 4.5 CONTRACTOR shall perform all activities in connection with its responsibilities under this AGREEMENT in accordance with all applicable laws, rules, regulations, and permit requirements of the federal, state, and local governments and their subordinate agencies.
- 4.6 CONTRACTOR shall be capable of receiving BIOSOLIDS twenty-four (24) hours per day, seven (7) days per week, and fifty two (52) weeks per year. CONTRACTOR shall be responsible for transporting and beneficially using a minimum of 50 wet tons

per day (wtpd) of CITY BIOSOLIDS per CALENDAR DAY after receiving 8 hours advanced notice. Failure of CONTRACTOR to provide these services shall result in assessment of liquidated damages as specified in Section 9.3.1.

4.6.1 CONTRACTOR shall accept BIOSOLIDS delivered to its SITE from CITY or CITY's contractor vehicles. These BIOSOLIDS will be counted toward meeting the quota requirements of Section 4.6. CONTRACTOR shall be compensated through a fee specified in Section 9.2.1.

4.6.2 CONTRACTOR shall be responsible for having all equipment available for the CITY to transport all CITY's BIOSOLIDS to its SITE and other sites as approved by the CITY, in case of emergency with 12 hours advance notice. An emergency shall be determined by the CITY and shall include, but not be limited to, earthquakes, hazardous weather conditions, availability of the CITY's Green Acres Farm, fires, floods, strikes, and civil unrest. CONTRACTOR shall be compensated through a fee specified in Section 9.2. In addition, CONTRACTOR shall be available for emergency transportation of grit and screenings to CITY designated sites. Compensation shall be in accordance with Section 9.2.2.

4.6.3 CONTRACTOR shall be responsible for meeting the daily quota, and in the event of missing loads of BIOSOLIDS, the CONTRACTOR shall notify the CITY by phone or email the same day. CONTRACTOR shall inquire with the CITY if any extra loads of BIOSOLIDS need to be loaded and transported to the CONTRACTOR's SITE(s). Failure of the CONTRACTOR to provide these services shall result in assessment of liquidated damages as specified in Section 9.3.1.

4.7. CONTRACTOR shall be responsible for providing and maintaining trucks, drivers, and any other necessary personnel and equipment required for the transportation of BIOSOLIDS from HWRP and TIWRP to CONTRACTOR's SITE(s).

4.7.1 CONTRACTOR shall provide training to all drivers on plant policies and procedures provided by the CITY and on the spill response accident plan prepared by the CONTRACTOR as provided in Section 4.10. Non-compliance with plant policies shall result in assessment of liquidated damages pursuant to Section 9.3.1. Drivers shall be subject to testing and certification pursuant to Section 4.11.3.

4.7.2 All trucks used for the transportation of BIOSOLIDS to CONTRACTOR's SITE(s) shall be required to (a) have watertight sealing tailgates, (b) have spillage control, (c) be tarped, and (d) carry the CITY-approved spill response equipment in accordance with the spill response plan. All trucks from HWRP must be washed and tarped within the loading facility with the facility doors closed and must be sprayed with the Odor Neutralizer prior to exiting the plant. All trucks from TIWRP similarly shall be washed with water and be

externally clean of BIOSOLIDS before leaving TIWRP. Trucks shall be subject to inspection and certification by the CITY pursuant to Section 4.11.2.

4.7.3 The primary and alternative routes to be taken by all trucks to and from HWRP and TIWRP shall be submitted by CONTRACTOR to the CITY for approval. Said primary routes shall be followed by CONTRACTOR unless notified in writing by the CITY that the routes have been changed or modified. At all times when traveling on surface streets, trucks shall follow authorized truck routes and shall avoid residential communities. All trucks are required to observe restrictions imposed by the CITY.

- a. CONTRACTOR' trucks shall take the alternative truck routes or follow appropriate civil authority routes during emergency situations.
- b. Failure of CONTRACTOR or their agents to comply with the conditions contained in Sections 4.7.3 and 4.7.3.a shall result in assessment of liquidated damages as described in Section 9.3.1.

4.8 CONTRACTOR shall be responsible for operating its equipment including positioning the equipment under the loading chutes, specifying to CITY the tonnage to be loaded and complying with the loading procedures established by the CITY. CONTRACTOR shall ensure trucks do not exceed the maximum legal limit by unloading excess BIOSOLIDS (above 79,500 gross pounds) onto the grit pad. BIOSOLIDS spilled as a result of CONTRACTOR's negligence shall be assessed liquidated damages pursuant to Section 9.3.1.

4.8.1 CONTRACTOR shall be responsible for receiving a specified tonnage of BIOSOLIDS within the loading windows provided by the CITY. Trucks arriving before or after the specified windows may or may not be loaded based on the CITY's operational needs, and shall be assessed liquidated damages pursuant to Section 9.3.1.

4.8.2 CONTRACTOR is responsible for minimizing the total duration that a truck spends at HWRP or TIWRP, from time of entry into the plant to time of exiting plant, by expediting the loading process and notifying the shift superintendent of any undue delays. Notwithstanding the foregoing, CONTRACTOR shall have the right to inspect and reject loads of BIOSOLIDS in accordance with Section 4.12.

4.9 CONTRACTOR shall be responsible for determining total tonnage of BIOSOLIDS loaded onto its transport trucks through the use of official weigh tickets. Insufficiently documented tickets shall be rejected and no payment shall be made for that portion of the BIOSOLIDS hauled. CONTRACTOR shall utilize CITY's weigh station to obtain official weight tickets. The CITY's weigh station is provided only for

convenience. Should the CITY's weigh station become non-operational, CONTRACTOR shall be required to obtain weight tickets from an independent certified weigh station and no additional charge shall be assessed to the CITY.

4.10 Prior to receiving its first truck load of CITY BIOSOLIDS, CONTRACTOR shall submit a detailed, complete spill response plan to the CITY. Such a plan is subject to approval by the CITY and the CITY shall assist CONTRACTOR in preparing the required plan. CONTRACTOR shall notify HWRP as soon as possible of any spill or accident while en route to or from HWRP or TIWRP in accordance with the CITY approved spill response plan. Failure to notify CITY of a spill or accident shall result in assessment of liquidated damages pursuant to Section 9.3.1. CONTRACTOR shall be responsible to follow up spills with a detailed report summarizing the causes and effects of the off-site spill as soon as possible but no later than one working day after such occurrence.

4.10.1 Once the BIOSOLIDS have been loaded onto CONTRACTOR's trucks and any such spillage or other accidental deposit of the BIOSOLIDS takes place anywhere en route, other than at HWRP/TIWRP or on surface streets from HWRP/TIWRP leading to approved freeway access, CONTRACTOR shall be responsible to take immediate steps to remove and clean up the spilled BIOSOLIDS and the affected area.

4.10.2 Spills at HWRP/TIWRP shall be cleaned up by the CITY. CONTRACTOR shall not be held liable for spills at HWRP/TIWRP where it is determined CONTRACTOR was not at fault.

4.11 CONTRACTOR agrees that the site(s), equipment, reports, drivers and record keeping documentation used by it for the performance of this AGREEMENT are subject to inspections by CITY personnel or its agents at any time without prior notice. Said inspections shall be for the purpose of ensuring compliance with the terms of this AGREEMENT and all applicable laws, rules and regulations.

4.11.1 CONTRACTOR shall supply CITY with weekly reports. Weekly reports shall begin with Monday and end on Sunday and shall be due every Wednesday for the previous week. Monthly reports shall describe all phases of operation and performance and shall be due on the 25th day of the following month. Annual summary reports shall summarize all the monthly data and shall include a statistical analysis of monitoring data, marketing data if applicable, and all other significant issues as requested by CITY. They shall be due March 1 for the previous year. The format for each type of report shall be provided by the CITY. Failure to submit reports on time shall result in assessment of liquidated damages specified in Section 9.3.1.

4.11.2 CONTRACTOR's trucks shall be regularly inspected for compliance with Section 4.7.2 at HWRP. Within three (3) working days after passing inspection, trucks shall be certified and be allowed to transport BIOSOLIDS.

CITY certification of trucks shall be for six (6) months or as otherwise determined by the CITY. However, certification can be revoked at any time should a truck not meet Section 4.7.2 requirements. Trucks without certification shall not be allowed to transport CITY BIOSOLIDS and shall be turned away with no charges assessed to the CITY. Trucks failing inspection shall be assessed liquidated damages pursuant to Section 9.3.1.

4.11.3 CONTRACTOR's drivers shall be regularly tested for knowledge by CITY personnel on plant policies and procedures and the spill response accident plan. Within three (3) working days after passing said test, drivers shall be certified and be allowed to transport CITY BIOSOLIDS. Certification of drivers shall be for six (6) months or as otherwise determined by the CITY. Driver certification can be revoked at any time for not complying with plant policies or procedures. Drivers not certified will not be allowed to transport CITY BIOSOLIDS and shall be turned away with no charges assessed to the CITY.

4.11.4 CONTRACTOR shall notify the CITY as soon as possible but no later than 24 hours should a local, state, or federal regulatory official find CONTRACTOR in violation of its permit(s) and shall inform the CITY within five (5) working days when an item of concern is noted in an inspection report. CONTRACTOR shall provide details to correct or mitigate the violation or the item of concern. Failure to notify the CITY within the indicated time frame shall result in assessment of liquidated damages pursuant to Section 9.3.1.

4.11.5 CONTRACTOR shall be issued a Notice of Deficiency (NOD) by the CITY for violations of CITY, local, state, or federal laws, regulations, rules, or policies. CONTRACTOR shall respond within two (2) working days upon receipt of a NOD with its plan to resolve the deficiency. CONTRACTOR shall resolve the deficiency within a mutually agreed upon time frame. Failure to correct the deficiency by the specified time frame shall result in assessment of liquidated damages in accordance with Section 9.3.1. CONTRACTOR's trucks or drivers may lose CITY certification when issued a NOD until the deficiency has been corrected and the truck or driver has passed re-inspection.

4.12 CONTRACTOR shall have the right to observe the CITY's loading of BIOSOLIDS at the plants and to inspect and reject any load of BIOSOLIDS at the plant which does not comply with applicable state and federal regulations. Once CONTRACTOR leaves HWRP or TIWRP, the load of BIOSOLIDS becomes CONTRACTOR's responsibility.

4.13 CONTRACTOR shall coordinate with the CITY any public relations effort associated with this CONTRACT.

4.14 CONTRACTOR shall notify the CITY immediately of conditions which would reasonably impair the safe delivery of BIOSOLIDS.

- 4.15 Should CONTRACTOR enter into a new contract with a municipality located in the Southern California area to transport and use BIOSOLIDS in a manner, and for a period of time, and at such volumes as are the same as or substantially similar to the project performed by CONTRACTOR hereunder, then CONTRACTOR shall provide a price to the CITY that is equal to or lower than the price offered to such municipality under such contract. CONTRACTOR shall notify the CITY within five (5) working days of signing such a contract with such a municipality and shall substantiate the difference in price by providing a copy of such contract to the CITY. CONTRACTOR shall remain responsible for meeting its BIOSOLIDS quota with the CITY. For the purpose of this article, Southern California shall be defined as all municipalities located within all counties south of, and including San Luis Obispo, Kern, and San Bernardino Counties.
- 4.16 CONTRACTOR shall meet the following requirements when managing CITY BIOSOLIDS with BIOSOLIDS from other sources.
- 4.16.1 CONTRACTOR shall not combine or blend CITY BIOSOLIDS with BIOSOLIDS from other sources to create one mixture without receiving prior written approval from the CITY. Such an approval shall not be unreasonably withheld. Failure to comply shall result in assessment of liquidated damages as specified in Section 9.3.1.
- 4.17 CONTRACTOR shall comply with the requirements of the CITY's BIOSOLIDS Environmental Management Systems (EMS) as specified in Attachment 15 of this AGREEMENT.

ARTICLE 5 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CITY

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

- 5.1 CITY shall be responsible for providing CONTRACTOR with a trucking quota for each day during the term of this CONTRACT. This quota shall be based on the previous month's average daily tonnage per truck but shall be referred to in truck loads per day. CITY will try to accommodate CONTRACTOR's operations, although plant operations shall take priority in assigning the loading hours. CITY shall try to provide a reasonably constant number of loads of BIOSOLIDS on a daily basis to limit fluctuations.

- 5.2 CITY shall be responsible for issuing the weekly listing of daily quota before 2:00 PM on Tuesday for the week of Wednesday through Tuesday.
- 5.2.1 CITY shall be responsible for providing loading windows or hours that CONTRACTOR can arrive at the CITY's facilities to load material. Windows shall be at least 1 hour per two truckloads.
- 5.2.2. CITY shall notify CONTRACTOR of any revisions to the trucking quota within a reasonable amount of time. Failure of the CITY to give the CONTRACTOR at a minimum 8 hours advanced notice of changes to the delivery window shall result in additional CITY payments to CONTRACTOR as specified in Section 9.3.2.
- 5.2.3. CITY shall be responsible for loading a maximum of 79,500 gross pounds of BIOSOLIDS onto each truck, unless CONTRACTOR requests less. If the driver is requested by the CITY to haul less than 40,000 net pounds (20 net tons) of BIOSOLIDS, then failure of CITY to provide at least 20 net tons shall result in additional CITY payments to CONTRACTOR as specified in Section 9.3.2.e.
- 5.2.4 CITY shall ensure CONTRACTOR completes offloading process at TIWRP for the TIRE project not exceed one (1) hour unless delays are the result of CONTRACTOR . Failure of the CITY to meet this condition shall result in additional CITY payments to CONTRACTOR pursuant to 9.3.2.f.
- 5.3 CITY shall be responsible for providing and maintaining truck loading facilities at HWRP and TIWRP and shall be further responsible for providing CITY personnel to operate said facilities.
- 5.4 CITY shall test its BIOSOLIDS as required by federal, state, and local regulations and shall transmit said test results to CONTRACTOR.
- 5.5 CITY shall ensure CONTRACTOR completes loading process within 2 hours. Failure of the CITY to meet this condition shall result in additional CITY payments to CONTRACTOR pursuant to 9.3.2.
- 5.6 CITY BIOSOLIDS shall meet U.S EPA's regulations and state guidelines for land application.
- 5.7 CITY is responsible for notifying CONTRACTOR of HWRP and TIWRP policies and procedures that CONTRACTOR is to comply with.

ARTICLE 6 – KEY CONTRACTOR PERSONNEL

- 6.1 CONTRACTOR designates the following persons to represent CONTRACTOR in all matters pertaining to this AGREEMENT:

Chris Marks, Project Manager
Denali Water Solutions, LLC.
2001 West Key Street
Colton, CA 92324
Direct Phone: (760) 801-3175
Office Phone: (714) 799-0801
Fax: (714) 799-0140

- 6.2 CONTRACTOR agrees that personnel assigned to these positions at the commencement of services under this AGREEMENT shall serve in these positions as long as required by the CONTRACT, and CONTRACTOR shall not change personnel assigned to these positions without the prior consent and written approval of CITY PROJECT MANAGER, whose consent shall not be withheld unreasonably.
- 6.3 Unless otherwise provided or approved by the CITY in writing, CONTRACTOR shall use its own employees to perform the services described in this CONTRACT. The CITY shall have the right to review and approve any personnel who are assigned to work under this CONTRACT. CONTRACTOR agrees to remove personnel from performing work under this CONTRACT if requested to do so by the CITY within thirty (30) business days of the written request by the CITY.
- 6.4 CONTRACTOR shall not use SUBCONTRACTORS to assist in performance of this CONTRACT without the prior written approval of the CITY, pursuant to the provisions of Article 14. If the CITY permits the use of SUBCONTRACTORS, CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT. The CITY has the right to approve CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of SUBCONTRACTORS. The CITY does not have any obligation to pay CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS. The use of SUBCONTRACTORS shall be subject to written approval of the CITY, pursuant to the provisions of Article 14.

ARTICLE 7 – TERM OF AGREEMENT

Unless otherwise provided, the term of this AGREEMENT shall be for five (5) years with one (1), three (3) year renewal option, to be exercised at the CITY's sole discretion for the services outlined in this AGREEMENT. A written notification will be submitted to the BOARD

by the Director of LA Sanitation to exercise the renewal option prior to the AGREEMENT's expiration. This AGREEMENT shall be effective on August 12, 2018 or upon execution of by all parties hereto, whichever is later, unless terminated as provided under Article 8.

The date of full execution is deemed to be the date when all of the following events have occurred:

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

ARTICLE 8 – TERMINATION

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) CALENDAR DAYS' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- 8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONTRACTOR is given not less than thirty (30) CALENDAR DAYS' written notice. Upon receipt of said written notice, CONTRACTOR shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonably necessary to terminate its activities.
- 8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors or (2) CONTRACTOR engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.
- 8.4 If termination for default is effected by the CITY, an equitable adjustment in the price provided for in this AGREEMENT shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment

due the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONTRACTOR'S default.

If termination for default is effected by the CONTRACTOR or if termination for convenience is effected by the CITY, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the CONTRACTOR for services rendered and expenses incurred prior to the termination, excluding attorney's fees, in addition to termination settlement costs reasonably incurred by the CONTRACTOR relating to written contracts that were executed prior to the termination. Thereafter, CONTRACTOR shall have no further claims against the CITY under this AGREEMENT.

- 8.5 Upon receipt of a termination action under Articles 8.1, 8.2 or 8.3 above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY within thirty (30) business days of said termination action all finished or unfinished documents and materials produced or procured under this CONTRACT, including all intellectual property rights thereto, which shall become CITY property upon date of such termination. CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein within thirty (30) business days of said termination.
- 8.6 Upon termination under Articles 8.1, 8.2 or 8.3 above, the CITY may take over the work and may award another party an AGREEMENT to complete the work under this AGREEMENT.
- 8.7 If, after the termination for failure of the CONTRACTOR to fulfill contractual obligations, it is determined that the CONTRACTOR had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the AGREEMENT price shall be made as provided in Article 8.4 of this article.
- 8.8 The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this AGREEMENT.

ARTICLE 9 – COMPENSATION, INVOICING AND PAYMENT

- 9.1 For and in consideration of the services performed by CONTRACTOR as described in Article 4 herein, CONTRACTOR shall invoice CITY and CITY shall compensate

CONTRACTOR pursuant to Sections 9.2 for the transportation and use of BIOSOLIDS and other wastewater residuals except as noted in Section 9.2.1, 9.2.2, 9.2.3, 9.2.4, 9.3.1, 9.3.2 and as otherwise agreed in writing by both parties. CONTRACTOR agrees that the compensation herein includes but not limited to all its overhead, capital costs, permit fees, profits and any and all other costs of the project.

9.2 CONTRACTOR agrees that the cost to the CITY for the land application of BIOSOLIDS, shall be based on the average daily tonnage, T, during the billing period, and the number of days, D, in that period. The cost for land application at Norris Farms and Desert Ridge Farms in Arizona, Baker Ranch Farms, Merced County in California, and/or sites approved by the CITY, shall be as follows:

Land Application Option	
Average daily tonnage, T (WTPD)	Hauling and Tipping fees (\$/wet ton)
0 to 100	\$ 51.25
101 and above	\$ 49.25

The costs for other beneficial uses of BIOSOLIDS shall be as follows:

Other Beneficial Use Option	
Site	Cost (\$/wet ton)
Nursery Products Composting, CA	\$57.25
South Kern Composting, CA	\$57.25
Anaergia Facility, Rialto CA	\$75.00

9.2.1 CONTRACTOR agrees that the tipping fee for BIOSOLIDS received via CITY vehicles and/or CITY contract hauls shall be based on the average daily tonnage, T, for the period in which BIOSOLIDS are transported by CITY trucks and/or CITY contract hauls and the number of days, D, in that period. The cost shall be as follows:

To CONTRACTOR land application sites: \$11.00/wton

To CONTRACTOR composting sites: \$34.95/wton

9.2.2 CITY shall pay CONTRACTOR for hauling services rendered under Section 4.6.2 as follows:

To TIWRP – TIRE project site	\$6.95/wton
For All Sites: (distance)	From HWRP or TIWRP (\$/wet ton)
From 0 to 50 miles	\$ 6.95/wton
From 51 to 100 miles	\$10.00/wton
From 101 to 150 miles	\$15.00/wton
From 151 to 200 miles	\$19.50/wton
Over 201 miles	\$0.095/mile/wton

Mileage is determined as the distance from the respective water reclamation plant, either from HWRP or TIWRP, to the designated site, one way.

- 9.3 Liquidated damages and additional CITY payments shall be accumulated every month, and shall be included on the invoice.

The CITY and CONTRACTOR agree that the amounts identified as liquidated damages (section 9.3.1) and/or additional CITY payments (section 9.3.2) are presumed to be the amount of damages sustained by the affected party. These amounts represent a fair average compensation for any loss that may be sustained as to the circumstances identified herein for which it would be impracticable to calculate actual damage.

9.3.1. Failure of CONTRACTOR to comply with Article 4 shall result in the following liquidated damages. Offenses that are repeated shall be assessed liquidated damages at twice the amount assessed for the first repeated offense, and four times the amount assessed for the second or subsequent repeated offenses. Repeat offenses are applicable where described below.

- a. A missed quota shall be assessed \$100 for the first truck load, or tonnage equivalent to a truck load, that a driver fails to pick up within the window or in accordance with Section 4.8.1. A liquidated damage associated with a repeat offense shall be assessed when more than one (1) truck, or tonnage equivalent, is not picked up within the loading window(s) in a given day or when the CONTRACTOR misses quota on consecutive days. The CITY will assess the higher liquidated damage between missing a single load on consecutive days or missing multiple loads on single or multiple days.
- b. An off-site spill not reported to the CITY within the timeframe specified in Section 4.10 shall be assessed \$500.
- c. A BIOSOLIDS spill shall be assessed \$200 each time that it is released from a truck. This includes in-plant spills, out-of-plant spills, but does not include BIOSOLIDS cleaned or washed off a truck before

leaving the loading area.

- d. A failed inspection shall be assessed \$100 for a truck or driver that does not pass inspection or a driver that does not pass testing. A repeated offense shall be the same vehicle or driver failing consecutive inspections or tests, respectively.
- e. A driver shall be assessed \$100 for violating a water reclamation plant policy or procedure. A repeated offense shall be the same driver violating any plant policy or procedure within 30 working days of the previous offense.
- f. A late annual or monthly report shall be assessed \$200 and a late weekly report will be assessed \$50 for reports that are not received by the deadline specified in the Section 4.11.1., or are incomplete or inaccurate. A repeated offense shall be a report that is more than one period late, or consecutive reports that are late.
- g. A route violation shall be assessed \$500 for trucks found on any route other than prescribed by the CITY's inspector.
- h. An inadequate response to a NOD issued by the CITY shall be assessed \$100 for each deficiency not resolved by the deadline established by the CITY. A repeat offense shall be a deficiency not resolved by the subsequent deadline.
- i. An unreported permit violation or an item of concern in an inspection report shall be assessed \$500 for a violation or item of concern that is not reported to the CITY within the time frame specified in 4.11.4.
- j. Failure of CONTRACTOR to segregate CITY BIOSOLIDS from BIOSOLIDS from other sources in accordance with Section 4.16.1 shall be assessed \$1000 per pile. A repeat offense shall be assessed for each day CONTRACTOR continues to violate Section 4.16.1 on that same pile.

9.3.2 Failure of the CITY to comply with Article 5 shall result in the following additional CITY payments to CONTRACTOR.

- a. The CITY shall compensate CONTRACTOR for a loading delay. The compensation shall be \$50 for each hour or portion thereof that a driver is kept, by CITY, longer than 2 hours at HWRP or TIWRP from entry time into the plant to time or existing plant as verified by load ticket. Time before the window shall not count towards determining the loading delay. This additional payment to CONTRACTOR is not to exceed \$200 per occurrence.

- b. The CITY shall compensate CONTRACTOR for a late cancellation. The compensation shall be \$50 for any load that is canceled 4 to 8 hours before the start of the quota window.
- c. The CITY shall compensate CONTRACTOR for a very late cancellation. The compensation shall be \$100 for any load that is canceled with less than 4 hours before the quota window.
- d. The CITY shall compensate CONTRACTOR for an onsite cancellation. The compensation shall be \$500 for a load that is canceled within the quota window and a driver, arriving within the window, is told to return empty or the driver returns empty after waiting 8 hours at HWRP or TIWRP.
- e. The CITY shall compensate CONTRACTOR \$100 per load for light loads, or those loads that contains less than 20 tons of BIOSOLIDS.
- f. The CITY shall compensate CONTRACTOR for an offloading delay. The compensation shall be \$95 for each hour or portion thereof that a driver is kept, by CITY, longer than 1 hour at TIWRP for TIRE project.

9.4 ADJUSTMENT TO PAYMENT

9.4.1 CONTRACTOR agrees that if at any time during the term of this AGREEMENT, CONTRACTOR should accept BIOSOLIDS from any other source than the CITY in accordance with Section 4.15, then the CITY's cost per ton will be equal to or lower than that price offered to the other client. Said cost reduction shall be reflected in the invoice for the first month after other BIOSOLIDS were received from other sources.

9.4.2 Should CONTRACTOR suffer substantial increased cost associated with the services it is providing pursuant to this AGREEMENT, which are outside its control, CONTRACTOR can petition the CITY for an increase in the cost paid by the CITY. CONTRACTOR agrees to provide the CITY with substantiated written documentation supporting its request for any increase in the cost to the CITY. The CITY shall have the right to review the documentation and agree to pay either the requested increase or a different negotiated amount or deny CONTRACTOR's request. Examples of increased costs outside of CONTRACTOR's control include changes in regulatory requirements, but not for new trucks purchasing or leasing. Any increase granted by the CITY shall be retroactive to the date the CONTRACTOR incurred the increased cost, but not retroactive to a date before CONTRACTOR notified the CITY of said increased cost.

9.4.3 The costs specified in Sections 9.2.1 and 9.2.2 will be adjusted on the

anniversary of the contract AGREEMENT (i.e., the date the first load of BIOSOLIDS was hauled), and on each anniversary date thereafter to reflect changes in the Consumer Price Index (CPI-U).

The cost-per-ton specified in Sections 9.2 through 9.2.2 of this Article will be adjusted by the CPI-U index annually with a cap of 3% each year during the term of this AGREEMENT and will be calculated as specified herein subject to the CITY's discretion under 9.4.1 and 9.4.2. The CPI-U will be the value published by the Bureau of Labor Statistics, U.S. for the Los Angeles-Long Beach area.

On each anniversary, the cost-per-ton specified in 9.2 through 9.2.3 shall be adjusted in accordance with the inflation factor as follows:

$$IN = [(CPI - U_1) / (CPI-U_B)]$$

Where:

IN = The annual inflation factor
CPI-U₁ = the published CPI-U as of the adjustment date
CPI-U_B = the published CPI-U as of the execution date

9.4.4 The cost-per-ton specified in Section 9.2 through 9.2.2 of this Article is the negotiated price and is all inclusive of CONTRACTOR's capital expenditures for equipment including trucks, tractors and/or other field equipment. No adjusting compensation is allowed for increases in equipment purchase price and/or vehicle leases.

9.5 FUEL COST ADJUSTMENT

The CITY shall compensate CONTRACTOR for costs due to increases in prices of fuel used for the transportation of BIOSOLIDS to the SITE and for the land application of BIOSOLIDS. The amount shall be submitted by CONTRACTOR in unit price per ton of BIOSOLIDS. The base price is the price of diesel as of August 12, 2016, which was approximately \$2.50 per gallon (the average price of diesel in California according to the U.S. Department of Energy, Energy Information Administration (EIA) California Retail on-Highway Diesel Price Index). These values are available on the EIA website at: <http://www/eia.doe.gov>.

The beneficial reuse fuel adjustment will be based on the roundtrip miles to the site used, the difference of the fuel price, the average fuel use of a truck (1 gallon/5.5 miles), and the average load weight of the truck per trip (25 tons/load) and using the formula:

Per Ton Beneficial Reuse Fuel Adjustment = No. of miles/roundtrip x (Fuel Cost/Gallon - \$2.50) x (1 Gallon/5.5 miles) x (1 trip/25 tons)

The monthly cost of the Fuel Adjustment will be the computed per ton beneficial reuse fuel adjustment multiplied by the number of wet tons for the month. CONTRACTOR shall submit monthly an invoice for the Beneficial Reuse Fuel Adjustment, the computation of the adjustment, and a copy of the U.S. Department of Energy, Energy Information Administration (EIA) California Retail on-Highway Diesel Price Index). Monthly beneficial reuse fuel adjustment will be paid to CONTRACTOR for increase in fuel cost above the base price of \$2.50/gallon or rebated to the CITY for decrease below the base price of \$2.50/gallon.

9.6 The CITY's obligation under this AGREEMENT shall only be to the extent of the present CITY appropriation to fund this AGREEMENT. No action, statement or omission of any officer, agent or employee of the CITY shall impose any obligation upon the CITY, such officer, agent or employee, except to the extent the CITY has appropriated funds and otherwise in accordance with the terms of this AGREEMENT. No work shall create an immediate indebtedness nor shall indebtedness arise against CITY for said work. However, if the CITY shall appropriate funds for any successive fiscal years, the CITY's liability shall be extended to the extent of such appropriation subject to the terms and conditions of this AGREEMENT.

9.7 CITY shall pay CONTRACTOR for services rendered hereunder in an amount to be calculated as provided herein. Such sums shall be paid in accordance with monthly or semi-monthly invoices prepared by CONTRACTOR and submitted to CITY. Separate invoices shall be prepared for each water reclamation plant.

9.7.1. All invoices shall be submitted in triplicate and shall contain the following information:

- a. Summary of invoice - a summary of invoice will include: total number of loads by material, total tonnage by material, average daily tonnage by material, cost calculation by assessment of liquidated damages and/or additional CITY payments when applicable, and the total amount due.
- b. Summary of load - a summary of loads will be broken down by material and include: date, load number, ticket number, plant or origin, field or process locations, weight in pounds, weight in tons, total number of trucks, total weight in pounds, and total weight in tons.
- c. Additional documents: Subcontractor utilization reports, statement of continued compliance with CITY contract policies, and any other documents the CITY requires.
- d. Weight tickets - original weight ticket for all loads invoiced.

Invoices not meeting these criteria are subject to rejection. Rejected invoices

must be resubmitted.

9.7.2. CONTRACTOR shall submit invoices either once per month or twice per month (1st through 15th and 16th through the end of the month) to the CITY. CITY shall review CONTRACTOR' invoice(s) and notify CONTRACTOR in writing of any exception or any disputed information within fourteen (14) CALENDAR DAYS of receipt.

9.7.3. CITY shall pay CONTRACTOR all amounts due within 60 days of receipt of the undisputed invoice.

9.7.4. The CITY shall not be responsible for the payment of invoices or supplemental invoices submitted to the CITY more than 90 days after the date of service. Resubmittals of invoices which were disputed may exceed this limit.

9.8 The ceiling cost for all fees and services identified in this AGREEMENT is \$27,003,246.

9.9 Upon request by the CITY, the CONTRACTOR shall provide documents on payments, certified weight records, and any other documents that can assist the CITY PROJECT MANAGER during an audit. The requested documentation shall be provided to the CITY within ten (10) CALENDAR DAYS of a request. Also, in addition to the above noted documentation, any other information reasonably requested shall be made available for audit by the CITY or designated representatives on behalf of the CITY. The CITY reserves the right to audit the above stated records for four (4) years after the end of the term of this CONTRACT. The CITY shall bear, at its sole expense, all significant audit costs.

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

ARTICLE 10 - AMENDMENTS, CHANGES OR MODIFICATIONS

Amendments, changes or modifications in the terms of this AGREEMENT may be made at any time by mutual written AGREEMENT between the parties hereto and shall be signed by the persons authorized to bind the parties thereto.

ARTICLE 11 - INDEMNIFICATION AND INSURANCE

11.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONTRACTOR undertakes and agrees to defend, indemnify and hold harmless CITY and any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damage or liability of any nature whatsoever, for death or injury to any person, including CONTRACTOR'S employees and agents or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason to the extent of the negligent acts, errors, omissions or willful misconduct incident to the performance of this AGREEMENT by the CONTRACTOR or its SUBCONTRACTORS of any tier. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this paragraph shall survive expiration or termination of this AGREEMENT.

11.2 INSURANCE

During the term of this CONTRACT and without limiting the CONTRACTOR'S indemnification of the CITY, the CONTRACTOR shall provide and maintain at its own expense during the term of this CONTRACT a program of insurance having the coverage and limits customarily carried and actually arranged by CONTRACTOR but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in Attachment 3 hereto, covering its operations hereunder. Such insurance shall conform to CITY requirements as established by Charter, ordinance, or policy and shall comply with the instructions set forth, in Attachment 3, and which can also be found at the Board of Public Work's website: <http://bpw.lacity.org/InsuranceForms.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev 05/12, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONTRACTOR shall comply with all insurance Contractual Requirements shown on Attachment 3 hereto. Attachment 3 is hereby incorporated by reference and made a part of this CONTRACT.

11.3 BONDS

All bonds which may be required hereunder shall conform to CITY requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative

Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

ARTICLE 12 - INDEPENDENT CONTRACTORS

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

ARTICLE 13 - WARRANTIES AND RESPONSIBILITY OF THE CONTRACTOR

- 13.1 CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within CONTRACTOR'S profession, doing the same or similar work under the same or similar circumstances.
- 13.2 CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by CONTRACTOR under this AGREEMENT. CONTRACTOR shall, at no additional cost to CITY, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, calculations, and other services.
- 13.3 The CONTRACTOR shall exhibit proper professional judgment in the use of information furnished by CITY. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, CONTRACTOR will notify the CITY in a reasonable manner within three (3) business days after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.
- 13.4 CONTRACTOR shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.
- 13.5 Except as specified in Article 11 and as otherwise provided in this AGREEMENT, the CONTRACTOR shall be and shall remain liable, in accordance with APPLICABLE LAW, for all damages to CITY caused by CONTRACTOR'S negligent performance

of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to CITY, CITY-furnished data, or any third party.

ARTICLE 14 - SUBCONTRACT APPROVAL

All subcontracts in excess of \$20,000 shall require the prior approval of the CITY. A copy of all subcontracts shall be submitted to the CITY PROJECT MANAGER showing the SUBCONTRACTOR'S name and dollar amount of each subcontract. Wholly-owned subsidiaries of the CONTRACTOR shall not be considered subcontractors. CONTRACTOR shall not substitute subcontractors listed in this AGREEMENT without the prior written approval of the CITY. CONTRACTOR shall not add subcontractors to assist in the performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subcontractors, CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT. The CITY has the right to approve CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of SUBCONTRACTORS. The CITY does not have any obligation to pay CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS

ARTICLE 15 - NON-DISCRIMINATION

Unless otherwise exempt, this CONTRACT is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this CONTRACT, CONTRACTOR shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT.

Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S CONTRACT with the CITY. Nothing contained in this CONTRACT shall be construed in any manner so as to require or permit any act which is prohibited by law.

ARTICLE 16 - SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 36.

ARTICLE 17 - CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION

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

To CITY:

Emmanuel Alloh
Project Manager
City of Los Angeles - LA Sanitation
Hyperion Water Reclamation Plant
12000 Vista Del Mar
Playa Del Rey, CA 90293
Fax: (310) 648-5070
Email: Emmanuel.alloh@lacity.org

To CONTRACTOR:

Chris Marks
Project Manager
Denali Water Solutions, LLC.
2001 West Key Street
Colton, CA 92324
Direct Phone: (760) 801-3175
Office Phone: (714) 799-0801
Fax: (714) 799-0140
Email: Chrisamarks@comcast.net

ARTICLE 18 - OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by CONTRACTOR or its SUBCONTRACTORS of any tier under this CONTRACT shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this CONTRACT including,

without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONTRACTOR hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONTRACTOR under this CONTRACT. CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

For all Work Products delivered to the CITY that are not originated or prepared by CONTRACTOR or its SUBCONTRACTORS of any tier under this CONTRACT, CONTRACTOR hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.

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

Any subcontract entered into by CONTRACTOR relating to this CONTRACT, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT to contractually bind or otherwise oblige its SUBCONTRACTORS performing work under this CONTRACT such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S CONTRACT with the CITY.

ARTICLE 19 - FORCE MAJEURE

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

ARTICLE 20 - SEVERABILITY

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

ARTICLE 21 - DISPUTES

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

ARTICLE 22 - ENTIRE AGREEMENT

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

ARTICLE 23 – INTELLECTUAL PROPERTY INDEMNIFICATION

The CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONTRACTOR, or its SUBCONTRACTORS of any tier, in performing the work under this CONTRACT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONTRACTOR, or its SUBCONTRACTORS of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this CONTRACT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this article shall survive expiration or termination of this CONTRACT.

ARTICLE 24 - INTELLECTUAL PROPERTY WARRANTY

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

ARTICLE 25 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees.

This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. None of the parties to this AGREEMENT shall be considered to be the drafter of this AGREEMENT or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter. This AGREEMENT was drafted with substantial input by the parties.

All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONTRACTOR shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

ARTICLE 26 - EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this CONTRACT is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

A. During the performance of this CONTRACT, CONTRACTOR agrees and represents

that it will provide equal employment practices and 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. 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. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of 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, 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. 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 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 have been given to CONTRACTOR.
- F. Upon a finding duly made that 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. 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 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, CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONTRACTOR shall establish and carry out a program in conformance with the provisions hereof.

- G. Notwithstanding any other provision of this CONTRACT, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- 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, 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. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with all such obligations shall subject 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.

ARTICLE 27 - AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this CONTRACT is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a CITY contract, CONTRACTOR certifies and represents that CONTRACTOR and each SUBCONTRACTOR hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are

employed and employees are treated equally and without regard to or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. CONTRACTOR shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed, by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
- C. At the request of the Awarding Authority or the DAA, CONTRACTOR shall certify on an electronic or hard copy form to be supplied, that CONTRACTOR has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the Awarding Authority or the DAA, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of a CITY contract. The failure shall only be established upon a finding to that effect by the Awarding Authority, on the basis of its own investigation or that of the DAA. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONTRACTOR.
- F. Upon a finding duly made that CONTRACTOR has breached the Affirmative Action Program provisions of a CITY contract, the CONTRACT may be forthwith cancelled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the said CONTRACTOR is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of the City of Los Angeles Administrative Code, et seq. In the event of such determination,

such CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONTRACTOR has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONTRACTOR by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the DAA and provide to the Awarding Authority electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of CITY contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an Awarding Authority of the CITY to accomplish this contract compliance program.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. By affixing its signature to a Contract that is subject to this article, the CONTRACTOR shall agree to adhere to the provisions in this article for the duration of the CONTRACT. The Awarding Authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan.
 - 1. The CONTRACTOR certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the CONTRACTOR's field of work. The CONTRACTOR shall:
 - (a) Recruit and make efforts to obtain employees through:
 - (i) Advertising employment opportunities in minority and other community news media or other publications.
 - (ii) Notifying minority, women and other community organizations of employment opportunities.
 - (iii) Maintaining contact with schools with diverse populations of

- students to notify them of employment opportunities.
- (iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.
 - (v) Promoting after school and vacation employment opportunities for minority, women and other youth.
 - (vi) Validating all job specifications, selection requirements, tests, etc.
 - (vii) Maintaining a file of the names and addresses of each worker referred to the CONTRACTOR and what action was taken concerning the worker.
 - (viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the CONTRACTOR has a collective bargaining agreement, has failed to refer a minority, woman or other worker.
- (b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.
 - (c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.
 - (d) Secure cooperation or compliance from the labor referral agency to the CONTRACTOR's contractual Affirmative Action Program obligations.
 - (e) Establish a person at the management level of the CONTRACTOR to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the CONTRACTOR's Equal Employment and Affirmative Action Program policies.
 - (f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.
 - (g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, SUBCONTRACTORS, vendors, unions and all others with whom the CONTRACTOR may become involved in fulfilling any of its Contracts.
 - (h) Document its good faith efforts to correct any deficiencies when problems are experienced by the CONTRACTOR in complying with its obligations pursuant to this article. The CONTRACTOR shall state:
 - (i) What steps were taken, how and on what date.
 - (ii) To whom those efforts were directed.
 - (iii) The responses received, from whom and when.
 - (iv) What other steps were taken or will be taken to comply and when.
 - (v) Why the CONTRACTOR has been or will be unable to comply.

2. Every contract of \$25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
- L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Awarding Authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of Contractors, Subcontractors and suppliers of all racial and ethnic groups; provided, however, that any contract subject to this ordinance shall require the CONTRACTOR, SUBCONTRACTOR or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the CONTRACTOR's, SUBCONTRACTOR's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- M. Any adjustments which may be made in the CONTRACTOR's work force to achieve the requirements of the CITY'S Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- N. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by Contractors engaged in the performance of CITY Contracts.
- O. All CONTRACTORS subject to the provisions of this section shall include a similar provision in all subcontracts awarded for work to be performed under the CONTRACT with the CITY and shall impose the same obligations, including but not limited to, filing and reporting obligations, on the SUBCONTRACTORS as are applicable to the CONTRACTOR. Failure of the CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with all such obligations shall subject the CONTRACTOR to the imposition of any and all

sanctions allowed by law, including but not limited to termination of the CONTRACTOR's CONTRACT with the CITY.

ARTICLE 28 - CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

If applicable, CONTRACTOR represents that it has obtained and presently holds the Business Tax Registration Certification(s) required by the CITY'S Business Tax Ordinance, section 21.00 *et seq.* of the Los Angeles Municipal Code (Attachment 2). For the term covered by this AGREEMENT, the CONTRACTOR shall maintain, or obtain as necessary, all such Certificates required of it under Business Tax Ordinance and shall not allow any such Certificate to be revoked or suspended. Should any such certificate(s) become suspended or revoked, it is the CONTRACTOR'S responsibility to report the matter immediately to the CITY PROJECT MANAGER.

ARTICLE 29 - CHILD SUPPORT ASSIGNMENT ORDERS

This CONTRACT is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONTRACTOR will fully comply with all applicable State and Federal employment reporting requirements for CONTRACTOR'S employees. CONTRACTOR shall also certify (1) that the Principal Owner(s) of CONTRACTOR are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that CONTRACTOR will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, *et seq.* of the California Family Code; and (3) that CONTRACTOR will maintain such compliance throughout the term of this CONTRACT.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONTRACTOR to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this CONTRACT, subjecting this CONTRACT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the CITY.

Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT. Failure of CONTRACTOR to obtain compliance of its SUBCONTRACTORS shall constitute a default by CONTRACTOR under this CONTRACT, subjecting this CONTRACT to termination

where such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the CITY.

CONTRACTOR certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

ARTICLE 30 - WORKER RETENTION ORDINANCE AND LIVING WAGE ORDINANCE

A. Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 et seq. of the Los Angeles Administrative Code, as amended from time to time, which is attached hereto as Attachment 7 and incorporated herein by this reference, and the Worker Retention Ordinance (WRO), Section 10.36 et seq., of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:

1. The CONTRACTOR assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.
2. The CONTRACTOR further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONTRACTOR shall require each of its SUBCONTRACTORS within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONTRACTOR shall receive and retain on file the executed pledges from each such Subcontractor within ninety (90) days of the execution of the Subcontract. CONTRACTOR'S evidence of executed pledges from each such Subcontractor shall fully discharge the obligation of the CONTRACTOR to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONTRACTOR, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONTRACTOR shall post the Notice of Prohibition Against Retaliation provided by the CITY.

4. Any Subcontract entered into by the CONTRACTOR relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the WRO.
 5. The CONTRACTOR shall comply with all rules, regulations and policies promulgated by the CITY'S Designated Administrative Agency, which may be amended from time to time.
- B. Under the provisions of Section 10.36.3(c) and Section 10.37.6(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate circumstances, to terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONTRACTOR has violated provisions of the LWO and the WRO or both.
- C. Where under the LWO Section 10.37.6(d), the CITY'S Designated Administrative Agency has determined (a) that the CONTRACTOR is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the CITY in such circumstances may impound monies otherwise due the CONTRACTOR in accordance with the following procedures. Impoundment shall mean that from monies due the CONTRACTOR, the CITY may deduct the amount determined to be due and owing by the CONTRACTOR to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d) (3) and disposed of under procedures there described through final and binding arbitration. Whether the CONTRACTOR is to continue work following an impoundment shall remain in the sole discretion of the CITY. The CONTRACTOR may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. The CONTRACTOR shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). CONTRACTOR shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONTRACTOR.

ARTICLE 31 - AMERICANS WITH DISABILITIES ACT

The CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act 42 U.S.C. Section 12101 et seq. and its implementing regulations. The CONTRACTOR will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. The CONTRACTOR will not discriminate against persons with disabilities nor against persons due to their relationship to

or association with a person with a disability. Any subcontract entered into by the CONTRACTOR, relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

ARTICLE 32 – LOS ANGELES BUSINESS INCLUSION PROGRAM

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women, Small, Emerging, Disabled Veteran and Other Business Enterprise (MBE/WBE/SBE/EBE/DVBE/OBE) firms on a level so designated in its proposal, if any. CONTRACTOR certifies that it has complied with Mayoral Executive Directive 14 regarding the Outreach Program for Personal Services Contracts. CONTRACTOR shall not change any of these designated SUBCONTRACTORS, nor shall CONTRACTOR reduce their level of effort, without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld.

CONTRACTOR agrees and obligates itself to submit a signed MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, provided herein as [Attachment 6], for each invoice as described in Article 9, listing current MBE/WBE/SBE/EBE/DVBE/OBE amounts invoiced as part of the invoicing procedures.

ARTICLE 33 - EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this CONTRACT is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time. (Attachment 4)

- A. During the performance of the CONTRACT, the CONTRACTOR certifies and represents that the CONTRACTOR will comply with the EBO.
- B. The failure of the CONTRACTOR to comply with the EBO will be deemed to be a material breach of this CONTRACT by the CITY.
- C. If the CONTRACTOR fails to comply with the EBO, the CITY may cancel, terminate or suspend this CONTRACT, in whole or in part, and all monies due or to become due under this CONTRACT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONTRACTOR in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.
- E. If the CITY'S Designated Administrative Agency determines that a CONTRACTOR has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the CONTRACT. Violation of this provision may be used as evidence against CONTRACTOR in actions taken pursuant to the provisions

of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

The CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

“During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-2625.”

ARTICLE 34 – SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as may be amended from time to time, which is attached hereto as Attachment 8 and incorporated herein by this reference. CONTRACTOR certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this AGREEMENT.

ARTICLE 35 - WAIVER

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

ARTICLE 36 - PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

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

- (a) Assign or otherwise alienate any of its rights hereunder, including the right to payment; or
- (b) Delegate, subcontract, or otherwise transfer any of its duties hereunder.

ARTICLE 37 - DISCOUNT TERMS

CONTRACTOR agrees to offer the CITY any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discounts to payments made under this AGREEMENT which meet the discount terms.

ARTICLE 38 - CONTRACTOR PERFORMANCE EVALUATION

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

ARTICLE 39 - CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this CONTRACT is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of the Los Angeles Administrative Code, as amended from time to time, which requires CONTRACTOR to update its responses to the responsibility questionnaire within thirty (30) CALENDAR DAYS after any change to the responses previously provided if such change would affect CONTRACTOR'S fitness and ability to continue performing this CONTRACT. (Attachment 1)

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this CONTRACT, CONTRACTOR pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this CONTRACT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONTRACTOR further agrees to: (1) notify the CITY within thirty (30) CALENDAR DAYS after receiving notification that any government agency has initiated an investigation which may result in a finding that CONTRACTOR is not in compliance with all applicable federal, state and local laws in performance of this CONTRACT; (2) notify the CITY within thirty (30) CALENDAR DAYS of all findings by a government agency or court of competent jurisdiction that CONTRACTOR has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that

its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the CITY within thirty (30) CALENDAR DAYS after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

ARTICLE 40 - BREACH

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

ARTICLE 41 - PERMITS

The CONTRACTOR and its directors, officers, partners, agents, employees, and SUBCONTRACTORS, to the extent allowed hereunder, shall obtain and maintain all permits, licenses, certifications, and other documents necessary for the CONTRACTOR'S performance of the services hereunder and shall pay any fees required therefore. CONTRACTOR certifies to immediately notify within two (2) business days, the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

ARTICLE 42 - CLAIMS FOR LABOR AND MATERIALS

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 CITY property (including reports, documents, and other tangible matter produced by the CONTRACTOR 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.

ARTICLE 43 - MUNICIPAL LOBBYING ORDINANCE

Any Contractor for the CITY shall submit a certification, on a form prescribed by the City Ethics Commission, that the CONTRACTOR acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance, Attachment 11, if the CONTRACTOR qualifies as a lobbying entity under the Ordinance. The exemptions contained in Los Angeles Administrative Code Section 10.40.4

shall not apply to this subsection.

ARTICLE 44 - FIRST SOURCE HIRING ORDINANCE

Unless otherwise exempt in accordance with the provisions of this Ordinance, this CONTRACT is subject to the applicable provisions of the First Source Hiring Ordinance (FSHO), Section 10.44 et seq. of the Los Angeles Administrative Code, as amended from time to time. (Attachment 12)

CONTRACTOR shall, prior to the execution of the CONTRACT, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONTRACTOR estimate they will need to fill in order to perform the services under the CONTRACT. The Department of Public Works Office of Contract Compliance is the DAA.

CONTRACTOR further pledges that it will, during the term of the CONTRACT, shall a) At least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Economic Workforce and Development Department (EWDD), which will refer individuals for interview; b) Interview qualified individuals referred by EWDD; and c) Prior to filling any employment opportunity, the CONTRACTOR shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONTRACTOR interviewed and the reasons why referred individuals were not hired.

Any Subcontract entered into by the CONTRACTOR relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.

CONTRACTOR shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the Designated Administrative Agency has determined that the CONTRACTOR intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the CONTRACTOR'S subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the CITY'S authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this CONTRACT and otherwise pursue legal remedies that may be available if the Designated Administrative Agency determines that the subject CONTRACTOR has violated provisions of the FSHO.

ARTICLE 45 - COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12) FOR MEASURE H/CONTRACTOR CONTRIBUTIONS/FUNDRAISING

The CONTRACTOR, SUBCONTRACTORS, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected CITY officials or candidates for elected CITY office if the contract is valued at \$100,000 or more and requires approval of a CITY elected official. Additionally, CONTRACTOR is required to provide and update certain information to the CITY as specified by law. Any contractor subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this CONTRACT: (Attachment 13)

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are subcontractor on City of Los Angeles contract #_____. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to contractor within 5 business days. Failure to comply may result in termination of contract or any other available legal remedies includes fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213/978-1960.

CONTRACTOR, SUBCONTRACTORS, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the CITY to terminate this AGREEMENT and pursue any and all legal remedies that may be available.

ARTICLE 46 - IRAN CONTRACTING ACT OF 2010

In accordance with California Public Contract Code Sections 2200-2208, all bidders submitting proposals for, entering into, or renewing contracts with the City of Los Angeles for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the Iran Contracting Act of 2010 Compliance Affidavit. (Attachment 14)

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

CITY OF LOS ANGELES

By: _____

Title: Commissioner, Board of Public Works

Date: _____

By: _____

Title: Commissioner, Board of Public Works

Date: _____

DENALI WATER SOLUTIONS

By: Jeff Thurber
JEFF THURBER

Title: President

Date: 5-21-2018

APPROVED AS TO FORM

MICHAEL N. FEUER, City Attorney

By: Adena Hopenstand
Adena Hopenstand

Title: Deputy City Attorney

Date: 5/24/18

ATTEST:

HOLLY WOLCOTT, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

CONTRACT NO. C - _____

SERVICE AGREEMENT
BETWEEN
THE CITY OF LOS ANGELES
AND
NURSERY PRODUCTS, LLC.
FOR
THE CITY'S BIOSOLIDS MANAGEMENT

**Hyperion Water Reclamation Plant
12000 Vista Del Mar
Playa Del Rey, CA 90293**

INDEX TO

AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND NURSERY PRODUCTS,
LLC. FOR THE CITY BIOSOLIDS MANAGEMENT

ARTICLE 1 - SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND
TITLES HEREIN..... 5

ARTICLE 2 - DEFINITIONS..... 5

ARTICLE 3 - PROJECT DESCRIPTION 8

ARTICLE 4 - RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY
CONTRACTOR..... 9

ARTICLE 5 - RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY 14

ARTICLE 6 - KEY CONTRACTOR PERSONNEL..... 15

ARTICLE 7 - TERM OF AGREEMENT 16

ARTICLE 8 - TERMINATION..... 17

ARTICLE 9 - COMPENSATION, INVOICING AND PAYMENT..... 18

ARTICLE 10 - AMENDMENTS, CHANGES OR MODIFICATIONS 25

ARTICLE 11 - INDEMNIFICATION AND INSURANCE 25

ARTICLE 12 - INDEPENDENT CONTRACTORS 26

ARTICLE 13 - WARRANTIES AND RESPONSIBILITY OF CONTRACTOR..... 26

ARTICLE 14 - SUBCONTRACTOR APPROVAL 27

ARTICLE 15 - NONDISCRIMINATION..... 28

ARTICLE 16 - SUCCESSORS AND ASSIGNS..... 28

ARTICLE 17 - CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION..... 28

ARTICLE 18 - OWNERSHIP AND LICENSE 29

ARTICLE 19 - FORCE MAJEURE..... 30

ARTICLE 20 - SEVERABILITY..... 30

ARTICLE 21 - DISPUTES 30

ARTICLE 22 - ENTIRE AGREEMENT 30

ARTICLE 23 - INTELLECTUAL PROPERTY INDEMNIFICATION..... 30

ARTICLE 24 - INTELLECTUAL PROPERTY WARRANTY..... 31

ARTICLE 25 - APPLICABLE LAW, INTERPRETATION AND LAW ENFORCEMENT 31

ARTICLE 26 - EQUAL EMPLOYMENT PRACTICES 32

ARTICLE 27 - AFFIRMATIVE ACTION PROGRAM..... 34

ARTICLE 28 - CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION
CERTIFICATE..... 38

ARTICLE 29 - CHILD SUPPORT OBLIGATIONS ASSIGNMENT ORDERS..... 38

ARTICLE 30 - WORKER RETENTION ORDINANCE/ LIVING WAGE ORDINANCE.. 39

ARTICLE 31 - AMERICANS WITH DISABILITIES ACT..... 41

ARTICLE 32 - LOS ANGELES BUSINESS INCLUSION PROGRAM..... 41

ARTICLE 33 - EQUAL BENEFITS ORDINANCE 41

ARTICLE 34 - SLAVERY DISCLOSURE ORDINANCE 42

ARTICLE 35 - WAIVER..... 42

ARTICLE 36 - PROHIBITION AGAINST ASSIGNMENT OR DELEGATION..... 43

ARTICLE 37 - DISCOUNT TERMS..... 43

ARTICLE 38 - CONTRACTOR PERFORMANCE EVALUATION	43
ARTICLE 39 - CONTRACTOR RESPONSIBILITY ORDINANCE	43
ARTICLE 40 - BREACH	44
ARTICLE 41 - PERMITS	44
ARTICLE 42 - CLAIMS FOR LABOR AND MATERIALS	44
ARTICLE 43 - MUNICIPAL LOBBYING ORDINANCE	45
ARTICLE 44 - FIRST SOURCE HIRING ORDINANCE.....	45
ARTICLE 45 - COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470 (c)(12).....	46
ARTICLE 46 - COMPLIANCE WITH THE IRAN CONTRACTING ACT OF 2010.....	47

LIST OF ATTACHMENTS

Attachment 1	Contractor Responsibility Ordinance
Attachment 2	BTRC Notice and Application Form
Attachment 3	Insurance Requirement Package
Attachment 4	Equal Benefits Ordinance
Attachment 5	City of Los Angeles Contract History Form
Attachment 6	Business Inclusion Program
Attachment 7	Worker Retention Ordinance/Living Wage Ordinance
Attachment 8	Slavery Disclosure Ordinance
Attachment 9	Los Angeles Residence Information Form
Attachment 10	Non Collusion Affidavit
Attachment 11	Municipal Lobbying Ordinance/Contract Bidder Certification of Compliance Form
Attachment 12	First Source Hiring Ordinance
Attachment 13	Contract Bidder Campaign Contribution and Fundraising Restrictions
Attachment 14	Iran Contracting Act of 2010 Compliance Affidavit
Attachment 15	CITY's biosolids Environmental Management System (EMS)

AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND NURSERY PRODUCTS,
LLC. FOR THE CITY BIOSOLIDS MANAGEMENT

This AGREEMENT, made and entered into by and between the City of Los Angeles, a municipal corporation, acting by order of and through its Board of Public Works (hereinafter referred to as the "CITY") and NURSERY PRODUCTS, LLC. (NP) (hereinafter referred to as "CONTRACTOR"), is set forth as follows:

WITNESSETH

WHEREAS, the CITY currently produces approximately 750 wet tons per day of biosolids at its Hyperion and Terminal Island water reclamation plants; and

WHEREAS, biosolids are a nutrient rich organic material, generated in the treatment of wastewater, that can be beneficially used; and

WHEREAS, the CITY's biosolids are known to contain nitrogen and other nutrients making it rich in organic matter and thereby making it a highly desirable soil amendment; and

WHEREAS, the CITY's biosolids meet U.S. EPA's regulations and state guidelines for composting, land application, and other beneficial uses; and

WHEREAS, the CITY is committed to finding innovative and creative means of beneficially using its biosolids; and

WHEREAS, the current contract (C-110634-2) for the CITY's biosolids management will expire on August 12, 2018; and

WHEREAS, on October 29, 2014, the Board of Public Works authorized the Bureau of Sanitation (LA Sanitation) to distribute a Request for Proposals (RFP) for the CITY's biosolids management and to negotiate a contract with qualified proposer(s); and

WHEREAS, on March 11, 2015, LA Sanitation received six (6) proposals in response to the RFP for the CITY's biosolids management; and

WHEREAS, the CONTRACTOR was deemed the second most qualified proposer with the experience and expertise to perform said services as determined by CITY staff based on the evaluation criteria set forth in the RFP; and

WHEREAS, the CONTRACTOR has extensive experience in managing and beneficially using biosolids; and

WHEREAS, the CONTRACTOR has offered to beneficially use of the CITY's biosolids by means of composting at the CONTRACTOR's permitted composting facility in

San Bernardino County in California and other sites as mutually agreed upon in writing; and

WHEREAS, the CONTRACTOR has agreed to perform the above-referenced tasks in an environmentally sound manner in accordance with all applicable laws, regulations, rules and other requirements of local, state and federal governments; and

WHEREAS, the term of this AGREEMENT is for five (5) years with one (1), three (3)-year renewal option and the ceiling cost for all the fees and services identified in this AGREEMENT is \$25,671,018; and

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

NOW, THEREFORE, in consideration of the promises, covenants, and AGREEMENTs hereinafter set forth, the parties hereby agree as follows:

ARTICLE 1 - SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, and/or section headings appearing herein have been inserted for convenience and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, intent or construction of any of the terms or provisions hereof. The language of this CONTRACT shall be construed according to its fair meaning and not strictly for or against the CITY or the CONTRACTOR. The singular shall include the plural; use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used. The terms "include" and "including" do not exclude items not enumerated that are in the same general class.

ARTICLE 2 - DEFINITIONS

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

AGREEMENT or CONTRACT This AGREEMENT between the CITY and CONTRACTOR for the City Biosolids Management

APPLICABLE LAW	All statutes, rules, regulations, permits, orders, or requirements of the United States, State of California, CITY, County of Los Angeles, and all regional, county, and local government authorities and agencies having applicable jurisdiction, that apply to or govern the facility, the site, or the performance of the CONTRACTOR'S and CITY'S respective obligations under this CONTRACT.
BIOSOLIDS	Digested sewage sludge which can be beneficially recycled and normally consisting of 15% to 35% solids content.
BOARD	The Board of Public Works of the City of Los Angeles.
CALENDAR DAY	Each day beginning at 12:01 AM and ending twenty-four (24) hours thereafter at 12:00 midnight
Certified Weigh Station	Weighing Station certified by the State of California Department of Food and Agriculture Division of Measurement Standards, the Los Angeles County Department of Weights and Measures as applicable, and/or any other applicable entity having jurisdiction.
CITY	The City of Los Angeles, Board of Public Works or its subordinate bureaus. Depending on the context in which it is used, the term CITY may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles who is authorized to represent the City of Los Angeles in manners concerning this document.
CITY PROJECT MANAGER	CITY's designated representative for all issues related to this AGREEMENT.
CONTRACTOR	Nursery Products, LLC. (NP)
CONTRACTOR PROJECT MANAGER	CONTRACTOR's representative for all issues related to this AGREEMENT.

Grit and Screenings	Materials composed of inorganic and organic non-hazardous materials captured by mechanical or hydraulic methods from the HWRP and TIWRP locations.
Gross Weight	The weight of the collection vehicle or other container including any loaded material
Holidays	New Year's Day, Independence Day, Labor Day, Thanksgiving, Christmas and other holidays officially designated and observed as such by the CITY
HWRP	City of Los Angeles Hyperion Water Reclamation Plant 12000 Vista Del Mar Playa Del Rey, CA 90293
LA Sanitation	The Bureau of Sanitation of the City of Los Angeles
MBE/WBE/SBE/EBE/DVBE/OB E	Minority/Women/Small/Emerging/Disabled Veteran/Other Business Enterprise
OPERATING DAYS	Any CALENDAR DAY for which CONTRACTOR is obligated, pursuant to this AGREEMENT, to manage the CITY's BIOSOLIDS.
PERMITS	All federal, State of California, local or any other pertinent governmental unit permits, orders, licenses, and approvals required by APPLICABLE LAW (including, but not limited to, California Environmental Quality Act (CEQA)), for the modifications, operations and maintenance of the beneficial use site.
Project, Project Services	The beneficial use of BIOSOLIDS in accordance with all applicable permits, environmental laws, and CITY approvals.
SERVICE FEE	Has the meaning specified in Section 9.1 of ARTICLE 9, hereof.
SITE	The site used by Nursery Products, LLC. to beneficially use the CITY's BIOSOLIDS.

SUBCONTRACTORS	An individual or company having an agreement with CONTRACTOR to provide services, equipment, or materials to CONTRACTOR
Tare Weight	The weight of an empty collection vehicle or container. Tare Weight is deducted from Gross Weight to obtain the net weight or gross tons of the delivered materials
TIWRP	Terminal Island Water Reclamation Plant 445 Ferry Street San Pedro, CA 90731
TRUCK	Tractor and trailer
Wet Ton	2000 pounds
Wtpd	Wet tons per day

ARTICLE 3 - PROJECT DESCRIPTION

The project shall consist of the following:

- 3.1 The loading of BIOSOLIDS generated at HWRP and TIWRP by the CITY onto CONTRACTOR's trucks for transport to CONTRACTOR's SITE(s);
- 3.2 The transportation of the BIOSOLIDS by CONTRACTOR from HWRP and TIWRP to CONTRACTOR's SITE(s);
- 3.3 The unloading of the BIOSOLIDS from CONTRACTOR's transport trucks at CONTRACTOR's SITE(s);
- 3.4 The beneficial use of the BIOSOLIDS by CONTRACTOR at CONTRACTOR's SITE(s), through composting and other technologies approved by the CITY;
- 3.5 The loading by the CITY and by CONTRACTOR and transporting and unloading of BIOSOLIDS, grit and screenings, by CONTRACTOR from HWRP and TIWRP, in case of emergency to sites, as designated by the CITY;
- 3.6 The monitoring, documenting, reporting by CONTRACTOR of all project-related activities performed by CONTRACTOR;

ARTICLE 4 - RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CONTRACTOR

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

- 4.1 CONTRACTOR shall perform the services described in Article 4.6. CONTRACTOR shall perform such work with a degree of skill and diligence normally employed by professional analysts or contractors performing the same or similar services.
- 4.2 CONTRACTOR warrants that the services will be performed consistent with generally accepted industry standards.
- 4.3 CONTRACTOR shall maintain all records, in their original form, pertaining to the performance of this CONTRACT, including records of financial transactions. These records shall be retained for a period of no less than four (4) years following final payment made by the CITY hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized CITY personnel or by the CITY'S representative at any time during the term of this CONTRACT and within the four (4) years following final payment made by the CITY hereunder or the expiration date of this CONTRACT, whichever occurs last. CONTRACTOR shall provide any reports requested by the CITY regarding performance of this Contract within thirty (30) business days of the request by the CITY. Any subcontract entered into by CONTRACTOR, as authorized under the terms of this CONTRACT, shall include a like provision for work to be performed under this CONTRACT.
- 4.4 CONTRACTOR shall assume full title to and complete responsibility for all BIOSOLIDS from the time they are loaded onto the CONTRACTOR' transport trucks at HWRP or TIWRP. BIOSOLIDS transported by the CITY certified vehicles other than the CONTRACTOR' vehicles shall become the CONTRACTOR's responsibility from the time they are unloaded at the CONTRACTOR's SITE. BIOSOLIDS transported by the CONTRACTOR in accordance with Section 4.6.2 shall become the CONTRACTOR's responsibility from the time they are loaded onto the CONTRACTOR's transport trucks to the time they are unloaded at the site designated by the CITY.
- 4.5 CONTRACTOR shall perform all activities in connection with its responsibilities under this AGREEMENT in accordance with all applicable laws, rules, regulations, and permit requirements of the federal, state, and local governments and their subordinate agencies.
- 4.6 CONTRACTOR shall be capable of receiving BIOSOLIDS twenty four (24) hours per day, seven (7) days per week, and fifty two (52) weeks per year. CONTRACTOR shall be responsible for transporting and beneficially using a minimum of 50 wet tons per day (wtpd) of CITY BIOSOLIDS per CALENDAR DAY after receiving 8 hours

advanced notice. Failure of CONTRACTOR to provide these services shall result in assessment of liquidated damages as specified in Section 9.3.1.

- 4.6.1 CONTRACTOR shall accept BIOSOLIDS delivered to its SITE from CITY or CITY's contractor vehicles. These BIOSOLIDS will be counted toward meeting the quota requirements of Section 4.6. CONTRACTOR shall be compensated through a fee specified in Section 9.2.1.
 - 4.6.2 CONTRACTOR shall be responsible for having all equipment available for the CITY to transport all CITY's BIOSOLIDS to its SITE and other sites as approved by the CITY, in case of emergency with 24 hours advance notice. An emergency shall be determined by the CITY and shall include, but not be limited to, earthquakes, hazardous weather conditions, availability of the CITY's Green Acres Farm, fires, floods, strikes, and civil unrest. CONTRACTOR shall be compensated through a fee specified in Section 9.2. In addition, CONTRACTOR shall be available for emergency transportation of grit and screenings to CITY designated sites. Compensation shall be in accordance with Section 9.2.
 - 4.6.3 CONTRACTOR shall be responsible for meeting the daily quota, and in the event of missing loads of BIOSOLIDS, the CONTRACTOR shall notify the CITY by phone or email the same day. CONTRACTOR shall inquire with the CITY if any extra loads of BIOSOLIDS need to be loaded and transported to the CONTRACTOR's SITE(s). Failure of the CONTRACTOR to provide these services shall result in assessment of liquidated damages as specified in Section 9.3.1.
- 4.7. CONTRACTOR shall be responsible for providing and maintaining trucks, drivers, and any other necessary personnel and equipment required for the transportation of BIOSOLIDS from HWRP and TIWRP to CONTRACTOR's SITE(s).
- 4.7.1 CONTRACTOR shall provide training to all drivers on plant policies and procedures provided by the CITY and on the spill response accident plan prepared by the CONTRACTOR as provided in Section 4.10. Non-compliance with plant policies shall result in assessment of liquidated damages pursuant to Section 9.3.1. Drivers shall be subject to testing and certification pursuant to Section 4.11.3.
 - 4.7.2 All trucks used for the transportation of BIOSOLIDS to CONTRACTOR's SITE(s) shall be required to (a) have watertight sealing tailgates, (b) have spillage control, (c) be tarped, and (d) carry the CITY approved spill response equipment in accordance with the spill response plan. All trucks from HWRP must be washed and tarped within the loading facility with the facility doors closed and must be sprayed with the Odor Neutralizer prior to exiting the plant. All trucks from TIWRP similarly shall be washed with water and be externally clean of BIOSOLIDS before leaving TIWRP. Trucks shall be

subject to inspection and certification by the CITY pursuant to Section 4.11.2.

- 4.7.3 The primary and alternative routes to be taken by all trucks to and from HWRP and TIWRP shall be submitted by CONTRACTOR to the CITY for approval. Said primary routes shall be followed by CONTRACTOR unless notified in writing by the CITY that the routes have been changed or modified. At all times when traveling on surface streets, trucks shall follow authorized truck routes and shall avoid residential communities. All trucks are required to observe restrictions imposed by the CITY.
- a. CONTRACTOR' trucks shall take the alternative truck routes or follow appropriate civil authority routes during emergency situations.
 - b. Failure of CONTRACTOR or their agents to comply with the conditions contained in Sections 4.7.3 and 4.7.3.a shall result in assessment of liquidated damages as described in Section 9.3.1.
- 4.8 CONTRACTOR shall be responsible for operating its equipment including positioning the equipment under the loading chutes, specifying to CITY the tonnage to be loaded and complying with the loading procedures established by the CITY. CONTRACTOR shall ensure trucks do not exceed the maximum legal limit by unloading excess BIOSOLIDS (above 79,500 gross pounds) onto the grit pad. BIOSOLIDS spilled as a result of CONTRACTOR's negligence shall be assessed liquidated damages pursuant to Section 9.3.1.
- 4.8.1 CONTRACTOR shall be responsible for receiving a specified tonnage of BIOSOLIDS within the loading windows provided by the CITY. Trucks arriving before or after the specified windows may or may not be loaded based on the CITY's operational needs, and shall be assessed liquidated damages pursuant to Section 9.3.1. Except for factors outside CONTRACTOR's control affect its ability to meet the loading window.
- 4.8.2 CONTRACTOR is responsible for minimizing the total duration that a truck spends at HWRP or TIWRP, from time of entry into the plant to time of exiting plant, by expediting the loading process and notifying the shift superintendent of any undue delays. Notwithstanding the foregoing, CONTRACTOR shall have the right to inspect and reject loads of BIOSOLIDS in accordance with Section 4.12.
- 4.9 CONTRACTOR shall be responsible for determining total tonnage of BIOSOLIDS loaded onto its transport trucks through the use of official weigh tickets. Insufficiently documented tickets shall be rejected and no payment shall be made for that portion of the BIOSOLIDS hauled. CONTRACTOR shall utilize CITY's weigh station to obtain official weight tickets. The CITY's weigh station is provided only for

convenience. Should the CITY's weigh station become non-operational, CONTRACTOR shall be required to obtain weight tickets from an independent certified weigh station and no additional charge shall be assessed to the CITY.

4.10 Prior to receiving its first truck load of CITY BIOSOLIDS, CONTRACTOR shall submit a detailed, complete spill response plan to the CITY. Such a plan is subject to approval by the CITY and the CITY shall assist CONTRACTOR in preparing the required plan. CONTRACTOR shall notify HWRP as soon as possible of any spill or accident while en route to or from HWRP or TIWRP in accordance with the CITY approved spill response plan. Failure to notify CITY of a spill or accident shall result in assessment of liquidated damages pursuant to Section 9.3.1. CONTRACTOR shall be responsible to follow up spills with a detailed report summarizing the causes and effects of the off-site spill as soon as possible but no later than one working day after such occurrence.

4.10.1 Once the BIOSOLIDS have been loaded onto CONTRACTOR's trucks and any such spillage or other accidental deposit of the BIOSOLIDS takes place anywhere en route, other than at HWRP/TIWRP or on surface streets from HWRP/TIWRP leading to approved freeway access, CONTRACTOR shall be responsible to take immediate steps to remove and clean up the spilled BIOSOLIDS and the affected area.

4.10.2 Spills at HWRP/TIWRP shall be cleaned up by the CITY. CONTRACTOR shall not be held liable for spills at HWRP/TIWRP where it is determined CONTRACTOR was not at fault.

4.11 CONTRACTOR agrees that the site(s), equipment, reports, drivers and record keeping documentation used by it for the performance of this AGREEMENT are subject to inspections by CITY personnel or its agents at any time without prior notice. Said inspections shall be for the purpose of ensuring compliance with the terms of this AGREEMENT and all applicable laws, rules and regulations.

4.11.1 CONTRACTOR shall supply CITY with weekly reports. Weekly reports shall begin with Monday and end on Sunday and shall be due every Wednesday for the previous week. Monthly reports shall describe all phases of operation and performance and shall be due on the 25th day of the following month. Annual summary reports shall summarize all the monthly data and shall include a statistical analysis of monitoring data, marketing data if applicable, and all other significant issues as requested by CITY. They shall be due March 1 for the previous year. The format for each type of report shall be provided by the CITY. Failure to submit reports on time shall result in assessment of liquidated damages specified in Section 9.3.1.

4.11.2 CONTRACTOR's trucks shall be regularly inspected for compliance with Section 4.7.2 at HWRP. Within three (3) working days after passing inspection, trucks shall be certified and be allowed to transport BIOSOLIDS.

CITY certification of trucks shall be for six (6) months or as otherwise determined by the CITY. However, certification can be revoked at any time should a truck not meet Section 4.7.2 requirements. Trucks without certification shall not be allowed to transport CITY BIOSOLIDS and shall be turned away with no charges assessed to the CITY. Trucks failing inspection shall be assessed liquidated damages pursuant to Section 9.3.1.

- 4.11.3 CONTRACTOR's drivers shall be regularly tested for knowledge by CITY personnel on plant policies and procedures and the spill response accident plan. Within three (3) working days after passing said test, drivers shall be certified and be allowed to transport CITY BIOSOLIDS. Certification of drivers shall be for six (6) months or as otherwise determined by the CITY. Driver certification can be revoked at any time for not complying with plant policies or procedures. Drivers not certified will not be allowed to transport CITY BIOSOLIDS and shall be turned away with no charges assessed to the CITY.
- 4.11.4 CONTRACTOR shall notify the CITY as soon as possible but no later than 24 hours should a local, state, or federal regulatory official find CONTRACTOR in violation of its permit(s) and shall inform the CITY within five (5) working days when an item of concern is noted in an inspection report. CONTRACTOR shall provide details to correct or mitigate the violation or the item of concern. Failure to notify the CITY within the indicated time frame shall result in assessment of liquidated damages pursuant to Section 9.3.1.
- 4.11.5 CONTRACTOR shall be issued a Notice of Deficiency (NOD) by the CITY for violations of CITY, local, state, or federal laws, regulations, rules, or policies. CONTRACTOR shall respond within two (2) working days upon receipt of a NOD with its plan to resolve the deficiency. CONTRACTOR shall resolve the deficiency within a mutually agreed upon time frame. Failure to correct the deficiency by the specified time frame shall result in assessment of liquidated damages in accordance with Section 9.3.1. CONTRACTOR's trucks or drivers may lose CITY certification when issued a NOD until the deficiency has been corrected and the truck or driver has passed re-inspection.
- 4.12 CONTRACTOR shall have the right to observe the CITY's loading of BIOSOLIDS at the plants and to inspect and reject any load of BIOSOLIDS at the plant which does not comply with applicable state and federal regulations. Once CONTRACTOR leaves HWRP or TIWRP, the load of BIOSOLIDS becomes CONTRACTOR's responsibility.
- 4.13 CONTRACTOR shall coordinate with the CITY any public relations effort associated with this CONTRACT.
- 4.14 CONTRACTOR shall notify the CITY immediately of conditions which would reasonably impair the safe delivery of BIOSOLIDS.

4.15 CONTRACTOR shall meet the following requirements when managing CITY BIOSOLIDS with BIOSOLIDS from other sources.

4.15.1 CONTRACTOR shall not combine or blend CITY BIOSOLIDS with BIOSOLIDS from other sources to create one mixture without receiving prior written approval from the CITY. Such an approval shall not be unreasonably withheld. Failure to comply shall result in assessment of liquidated damages as specified in Section 9.3.1. Composting process shall be exempted from this provision.

4.16 CONTRACTOR shall comply with the requirements of the CITY's BIOSOLIDS Environmental Management Systems (EMS) as specified in Attachment 15 of this AGREEMENT.

ARTICLE 5 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CITY

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

5.1 CITY shall be responsible for providing CONTRACTOR with a trucking quota for each day during the term of this CONTRACT. This quota shall be based on the previous month's average daily tonnage per truck but shall be referred to in truck loads per day. CITY will try to accommodate CONTRACTOR's operations, although plant operations shall take priority in assigning the loading hours. CITY shall try to provide a reasonably constant number of loads of BIOSOLIDS on a daily basis to limit fluctuations.

5.2 CITY shall be responsible for issuing the weekly listing of daily quota before 2:00 PM on Tuesday for the week of Wednesday through Tuesday.

5.2.1 CITY shall be responsible for providing loading windows or hours that CONTRACTOR can arrive at the CITY's facilities to load material. Windows shall be at least 1 hour per two truckloads.

5.2.2. CITY shall notify CONTRACTOR of any revisions to the trucking quota within a reasonable amount of time. Failure of the CITY to give the CONTRACTOR at a minimum 8 hours advanced notice of changes to the delivery window shall result in additional CITY payments to CONTRACTOR as specified in

Section 9.3.2.

- 5.2.3. CITY shall be responsible for loading a maximum of 79,500 gross pounds of BIOSOLIDS onto each truck, unless CONTRACTOR requests less. If the driver requests at least 34,000 net pounds (17 net tons) of BIOSOLIDS, then failure of CITY to provide at least 17 net tons shall result in additional CITY payments to CONTRACTOR as specified in Section 9.3.2.
- 5.3 CITY shall be responsible for providing and maintaining truck loading facilities at HWRP and TIWRP and shall be further responsible for providing CITY personnel to operate said facilities.
- 5.4 CITY shall test its BIOSOLIDS as required by federal, state, and local regulations and shall transmit said test results to CONTRACTOR.
- 5.5 CITY shall ensure CONTRACTOR completes loading process within 4 hours. Failure of the CITY to meet this condition shall result in additional CITY payments to CONTRACTOR pursuant to 9.3.2.
- 5.6 CITY BIOSOLIDS shall meet U.S EPA's regulations and state guidelines for land application.
- 5.7 CITY is responsible for notifying CONTRACTOR of HWRP and TIWRP policies and procedures that CONTRACTOR is to comply with.

ARTICLE 6 – KEY CONTRACTOR PERSONNEL

- 6.1 CONTRACTOR designates the following persons to represent CONTRACTOR in all matters pertaining to this AGREEMENT:

Pamela K. Racey, Vice President of Business Development
Nursery Products, LLC.
435 Williams Court, Suite 100
Baltimore, MD 21220
Direct Phone: (410) 991-4169
Email: PRacey@synagro.com

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

- 6.3 Unless otherwise provided or approved by the CITY in writing, CONTRACTOR shall use its own employees to perform the services described in this CONTRACT. The CITY shall have the right to review and approve any personnel who are assigned to work under this CONTRACT. CONTRACTOR agrees to remove personnel from performing work under this CONTRACT if requested to do so by the CITY within thirty (30) business days of the written request by the CITY.
- 6.4 CONTRACTOR shall not use SUBCONTRACTORS to assist in performance of this CONTRACT without the prior written approval of the CITY, pursuant to the provisions of Article 14. If the CITY permits the use of SUBCONTRACTORS, CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT. The CITY has the right to approve CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of SUBCONTRACTORS. The CITY does not have any obligation to pay CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS. The use of SUBCONTRACTORS shall be subject to written approval of the CITY, pursuant to the provisions of Article 14.

ARTICLE 7 – TERM OF AGREEMENT

Unless otherwise provided, the term of this AGREEMENT shall be for five (5) years with one (1), three (3)-year renewal option, to be exercised at the CITY's sole discretion for the services outlined in this AGREEMENT. A written notification will be submitted to the BOARD by the Director of LA Sanitation to exercise the renewal option prior to the AGREEMENT's expiration. This AGREEMENT shall be effective upon execution of by all parties hereto, whichever is later, unless terminated as provided under Article 8.

The date of full execution is deemed to be the date when all of the following events have occurred:

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

ARTICLE 8 – TERMINATION

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) CALENDAR DAYS' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- 8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONTRACTOR is given not less than ninety (90) CALENDAR DAYS' written notice. Upon receipt of said written notice, CONTRACTOR shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonably necessary to terminate its activities.
- 8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors or (2) CONTRACTOR engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.
- 8.4 If termination for default is effected by the CITY, an equitable adjustment in the price provided for in this AGREEMENT shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONTRACTOR'S default.

If termination for default is effected by the CONTRACTOR or if termination for convenience is effected by the CITY, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the CONTRACTOR for services rendered and expenses incurred prior to the termination, excluding attorney's fees, in addition to termination settlement costs reasonably incurred by the CONTRACTOR relating to written contracts that were executed prior to the termination. Thereafter, CONTRACTOR shall have no further claims against the CITY under this AGREEMENT.

- 8.5 Upon receipt of a termination action under Articles 8.1, 8.2 or 8.3 above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice

directs otherwise), and (2) deliver or otherwise make available to the CITY within thirty (30) business days of said termination action all finished or unfinished documents and materials produced or procured under this CONTRACT, including all intellectual property rights thereto, which shall become CITY property upon date of such termination. CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein within thirty (30) business days of said termination.

- 8.6 Upon termination under Articles 8.1, 8.2 or 8.3 above, the CITY may take over the work and may award another party an AGREEMENT to complete the work under this AGREEMENT.
- 8.7 If, after the termination for failure of the CONTRACTOR to fulfill contractual obligations, it is determined that the CONTRACTOR had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the AGREEMENT price shall be made as provided in Article 8.4 of this article.
- 8.8 The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this AGREEMENT.

ARTICLE 9 – COMPENSATION, INVOICING AND PAYMENT

- 9.1 For and in consideration of the services performed by CONTRACTOR as described in Article 4 herein, CONTRACTOR shall invoice CITY and CITY shall compensate CONTRACTOR pursuant to Sections 9.2 for the transportation and use of BIOSOLIDS and other wastewater residuals except as noted in Section 9.2.1, 9.2.2, 9.2.3, 9.2.4, 9.3.1, 9.3.2 and as otherwise agreed in writing by both parties. CONTRACTOR agrees that the compensation herein includes but not limited to all its overhead, capital costs, permit fees, profits and any and all other costs of the project.
- 9.2 CONTRACTOR agrees that the cost to the CITY for the composting of BIOSOLIDS or other options, shall be based on the average daily tonnage, T, during the billing period, and the number of days, D, in that period. The cost for composting at Nursery Products Composting Facility, San Bernardino County in California shall be as follows:

Nursery Products Composting Facility	
Average daily tonnage, T (WTPD)	Hauling and Tipping Fees (\$/wet ton)
0 to 100	\$ 56.34
101 to 400	\$ 53.20
401 and above	\$ 50.95

The costs for the back-up locations shall be as follows:

Back-Up Locations	
Site	Hauling and Tipping Fees (\$/wet ton)
Yuma Land Application, AZ	\$59.12
South Kern Composting Facility	\$56.34
Arizona Soils, AZ	\$56.34
Simi Valley Landfill	\$75.60
La Paz County Landfill	\$80.40

The costs for grit and screenings as follows:

Simi Valley Landfill (includes transportation and tipping fee)	\$75.60/wet ton
Transportation Only to Simi Valley Landfill	\$20.00/wet ton

9.2.1 CONTRACTOR agrees that the tipping fee for BIOSOLIDS received via CITY vehicles and/or CITY contract hauls shall be based on the average daily tonnage, T, for the period in which BIOSOLIDS are transported by CITY trucks and/or CITY contract hauls and the number of days, D, in that period. The cost shall be as follows:

Nursery Products Composting Facility	
Average daily tonnage, T (WTPD)	Tipping Fees only (\$/ wet ton)
0 to 100	\$ 32.00
101 to 400	\$ 29.80
401 and above	\$ 26.75

To South Kern Composting Facility (Tipping only) \$36.00/wet ton

9.2.2 CITY shall pay CONTRACTOR for hauling services rendered under Section 4.6.2 as follows:

To TIWRP – TIRE project site \$18.00/wet ton

To other site(s)

Trip miles

\$0.18/mile

Mileage is determined as the distance from the respective water reclamation plant, either from HWRP or TIWRP, to the designated site, one way.

- 9.3 Liquidated damages and additional CITY payments shall be accumulated every month, and shall be included on the invoice.

The CITY and CONTRACTOR agree that the amounts identified as liquidated damages (section 9.3.1) and/or additional CITY payments (section 9.3.2) are presumed to be the amount of damages sustained by the affected party. These amounts represent a fair average compensation for any loss that may be sustained as to the circumstances identified herein for which it would be impracticable to calculate actual damage.

9.3.1. Failure of CONTRACTOR to comply with Article 4 shall result in the following liquidated damages. Offenses that are repeated shall be assessed liquidated damages at twice the amount assessed for the first repeated offense, and four times the amount assessed for the second or subsequent repeated offenses. Repeat offenses are applicable where described below.

- a. A missed quota shall be assessed \$100 for the first truck load, or tonnage equivalent to a truck load, that a driver fails to pick up within the window or in accordance with Section 4.8.1. A liquidated damage associated with a repeat offense shall be assessed when more than one (1) truck, or tonnage equivalent, is not picked up within the loading window(s) in a given day or when the CONTRACTOR misses quota on consecutive days. The CITY will assess the higher liquidated damage between missing a single load on consecutive days or missing multiple loads on single or multiple days.
- b. An off-site spill not reported to the CITY within the timeframe specified in Section 4.10 shall be assessed \$500.
- c. A BIOSOLIDS spill shall be assessed \$200 each time that it is released from a truck. This includes in plant spills, out-of-plant spills, but does not include BIOSOLIDS cleaned or washed off a truck before leaving the loading area.
- d. A failed inspection shall be assessed \$100 for a truck or driver that does not pass inspection or a driver that does not pass testing. A repeated offense shall be the same vehicle or driver failing consecutive inspections or tests, respectively.

- e. A driver shall be assessed \$100 for violating a water reclamation plant policy or procedure. A repeated offense shall be the same driver violating any plant policy or procedure within 30 working days of the previous offense.
- f. A late annual or monthly report shall be assessed \$200 and a late weekly report will be assessed \$50 for reports that are not received by the deadline specified in the Section 4.11.1., or are incomplete or inaccurate. A repeated offense shall be a report that is more than one period late, or consecutive reports that are late.
- g. A route violation shall be assessed \$500 for trucks found on any route other than by CITY's inspector.
- h. An inadequate response to a NOD issued by the CITY shall be assessed \$100 for each deficiency not resolved by the deadline established by the CITY. A repeat offense shall be a deficiency not resolved by the subsequent deadline.
- i. An unreported permit violation or an item of concern in an inspection report shall be assessed \$500 for a violation or item of concern that is not reported to the CITY within the time frame specified in 4.11.4.
- j. Failure of CONTRACTOR to segregate CITY BIOSOLIDS from BIOSOLIDS from other sources in accordance with Section 4.16.1 shall be assessed \$1000 per pile. A repeat offense shall be assessed for each day CONTRACTOR continues to violate Section 4.16.1 on that same pile. Composting process shall be exempted from this provision.

9.3.2 Failure of the CITY to comply with Article 5 shall result in the following additional CITY payments to CONTRACTOR.

- a. The CITY shall compensate CONTRACTOR for a loading delay. The compensation shall be \$50 for each hour or portion thereof that a driver is kept, by CITY, longer than 4 hours at HWRP or TIWRP from entry time into the plant to time or existing plant as verified by load ticket. Time before the window shall not count towards determining the loading delay. This additional CITY payment to CONTRACTOR is not to exceed \$200 per occurrence.
- b. The CITY shall compensate CONTRACTOR for a late cancellation. The compensation shall be \$50 for any load that is canceled 4 to 8 hours before the start of the quota window.
- c. The CITY shall compensate CONTRACTOR for a very late

cancellation. The compensation shall be \$100 for any load that is canceled with less than 4 hours before the quota window.

- d. The CITY shall compensate CONTRACTOR for an onsite cancellation. The compensation shall be \$500 for a load that is canceled within the quota window and a driver, arriving within the window, is told to return empty or the driver returns empty after waiting 8 hours at HWRP or TIWRP.
- e. The CITY shall compensate CONTRACTOR \$100 per load for light loads, or those loads that contains less than 17 tons of BIOSOLIDS.

9.4 ADJUSTMENT TO PAYMENT

9.4.1 Should CONTRACTOR suffer substantial increased cost associated with the services it is providing pursuant to this AGREEMENT, which are outside its control, CONTRACTOR can petition the CITY for an increase in the cost paid by the CITY. CONTRACTOR agrees to provide the CITY with substantiated written documentation supporting its request for any increase in the cost to the CITY. The CITY shall have the right to review the documentation and agree to pay either the requested increase or a different negotiated amount or deny CONTRACTOR's request. Examples of increased costs outside of CONTRACTOR's control include changes in regulatory requirements, but not for new trucks purchasing or leasing. Any increase granted by the CITY shall be retroactive to the date the CONTRACTOR incurred the increased cost, but not retroactive to a date before CONTRACTOR notified the CITY of said increased cost.

9.4.2 The costs specified in Sections 9.2.1 and 9.2.2 will be adjusted on the anniversary of the contract AGREEMENT (i.e., the date the first load of BIOSOLIDS was hauled), and on each anniversary date thereafter to reflect changes in the Consumer Price Index (CPI-U).

The cost-per-ton specified in Sections 9.2 through 9.2.2 of this Article will be adjusted by the CPI-U index annually with a cap of 3% each year during the term of this AGREEMENT and will be calculated as specified herein subject to the CITY's discretion under 9.4.1. The CPI-U will be the value published by the Bureau of Labor Statistics, U.S. for the Los Angeles-Long Beach area.

On each anniversary, the cost-per-ton specified in 9.2 through 9.2.3 shall be adjusted in accordance with the inflation factor as follows:

$$IN = [(CPI - U_1) / (CPI-U_B)]$$

Where:

IN = The annual inflation factor

CPI-U₁ = the published CPI-U as of the adjustment date
CPI-U_B = the published CPI-U as of the execution date

9.4.3 The cost-per-ton specified in Section 9.2 through 9.2.2 of this Article is the negotiated price and is all inclusive of CONTRACTOR's capital expenditures for equipment including trucks, tractors and/or other field equipment. No adjusting compensation is allowed for increases in equipment purchase price and/or vehicle leases.

9.5 FUEL COST ADJUSTMENT

The CITY shall compensate CONTRACTOR for costs due to increases in prices of fuel used for the transportation of BIOSOLIDS to the SITE and for the land application of BIOSOLIDS. The amount shall be submitted by CONTRACTOR in unit price per ton of BIOSOLIDS. The base price is the price of diesel as of August 2016, which was approximately \$2.72 per gallon (the average price of diesel in California according to the U.S. Department of Energy, Energy Information Administration (EIA) California Retail on-Highway Diesel Price Index). These values are available on the EIA website at: <http://www/eia.doe.gov>.

The beneficial reuse fuel adjustment will be based on the roundtrip miles to the site used, the difference of the fuel price, the average fuel use of a truck (1 gallon/5.5 miles), and the average load weight of the truck per trip (25 tons/load) and using the formula:

Per Ton Beneficial Reuse Fuel Adjustment = No. of miles/roundtrip x (Fuel Cost/Gallon - \$2.72) x (1 Gallon/5.5 miles) x (1 trip/25 tons)

The monthly cost of the Fuel Adjustment will be the computed per ton beneficial reuse fuel adjustment multiplied by the number of wet tons for the month. CONTRACTOR shall submit monthly an invoice for the Beneficial Reuse Fuel Adjustment, the computation of the adjustment, and a copy of the U.S. Department of Energy, Energy Information Administration (EIA) California Retail on-Highway Diesel Price Index). Monthly beneficial reuse fuel adjustment will be paid to CONTRACTOR for increase in fuel cost above the base price of \$2.72/gallon or rebated to the CITY for decrease below the base price of \$2.72/gallon.

9.6 The CITY's obligation under this AGREEMENT shall only be to the extent of the present CITY appropriation to fund this AGREEMENT. No action, statement or omission of any officer, agent or employee of the CITY shall impose any obligation upon the CITY, such officer, agent or employee, except to the extent the CITY has appropriated funds and otherwise in accordance with the terms of this AGREEMENT. No work shall create an immediate indebtedness nor shall indebtedness arise against CITY for said work. However, if the CITY shall appropriate funds for any successive fiscal years, the CITY's liability shall be extended to the extent of such appropriation subject to the terms and conditions of

this AGREEMENT.

9.7 CITY shall pay CONTRACTOR for services rendered hereunder in an amount to be calculated as provided herein. Such sums shall be paid in accordance with monthly or semi-monthly invoices prepared by CONTRACTOR and submitted to CITY. Separate invoices shall be prepared for each water reclamation plant.

9.7.1. All invoices shall be submitted in triplicate and shall contain the following information:

- a. Summary of invoice - a summary of invoice will include: total number of loads by material, total tonnage by material, average daily tonnage by material, cost calculation by assessment of liquidated damages and/or additional CITY payments when applicable, and the total amount due.
- b. Summary of load - a summary of loads will be broken down by material and include: date, load number, ticket number, plant or origin, field or process locations, weight in pounds, weight in tons, total number of trucks, total weight in pounds, and total weight in tons.
- c. Additional documents: SUBCONTRACTORS utilization reports, statement of continued compliance with CITY contract policies, and any other documents the CITY requires.
- d. Weight tickets - original weight ticket for all loads invoiced.

Invoices not meeting these criteria are subject to rejection. Rejected invoices must be resubmitted.

9.7.2. CONTRACTOR shall submit invoices either once per month or twice per month (1st through 15th and 16th through the end of the month) to the CITY. CITY shall review CONTRACTOR' invoice(s) and notify CONTRACTOR in writing of any exception or any disputed information within fourteen (14) CALENDAR DAYS of receipt.

9.7.3. CITY shall pay CONTRACTOR all amounts due within 60 days of receipt of the undisputed invoice.

9.7.4. The CITY shall not be responsible for the payment of invoices or supplemental invoices submitted to the CITY more than 90 days after the date of service. Resubmittals of invoices which were disputed may exceed this limit.

9.8 The ceiling cost for all fees and services identified in this AGREEMENT is \$25,671,018.

- 9.9 Upon request by the CITY, the CONTRACTOR shall provide documents on payments, certified weight records, and any other documents that can assist the CITY PROJECT MANAGER during an audit. The requested documentation shall be provided to the CITY within ten (10) CALENDAR DAYS of a request. Also, in addition to the above noted documentation, any other information reasonably requested shall be made available for audit by the CITY or designated representatives on behalf of the CITY. The CITY reserves the right to audit the above stated records for four (4) years after the end of the term of this CONTRACT. The CITY shall bear, at its sole expense, all significant audit costs.
- 9.10 CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the California False Claims Act (Cal. Gov. Code 12650 et.seq.), including treble damages, costs of legal actions to recover payments and civil penalties of up to \$10,000 per false claim.

ARTICLE 10 - AMENDMENTS, CHANGES OR MODIFICATIONS

Amendments, changes or modifications in the terms of this AGREEMENT may be made at any time by mutual written AGREEMENT between the parties hereto and shall be signed by the persons authorized to bind the parties thereto.

ARTICLE 11 - INDEMNIFICATION AND INSURANCE

11.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONTRACTOR undertakes and agrees to defend, indemnify and hold harmless CITY and any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damage or liability of any nature whatsoever, for death or injury to any person, including CONTRACTOR'S employees and agents or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason to the extent of the negligent acts, errors, omissions or willful misconduct incident to the performance of this AGREEMENT by the CONTRACTOR or its SUBCONTRACTORS of any tier. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this paragraph shall survive expiration or termination of this AGREEMENT.

11.2 INSURANCE

During the term of this CONTRACT and without limiting the CONTRACTOR'S indemnification of the CITY, the CONTRACTOR shall provide and maintain at its own expense during the term of this CONTRACT a program of insurance having the coverage and limits customarily carried and actually arranged by CONTRACTOR but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in Attachment 3 hereto, covering its operations hereunder. Such insurance shall conform to CITY requirements as established by Charter, ordinance, or policy and shall comply with the instructions set forth, in Attachment 3, and which can also be found at the Board of Public Work's website: <http://bpw.lacity.org/InsuranceForms.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev 05/12, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONTRACTOR shall comply with all insurance Contractual Requirements shown on Attachment 3 hereto. Attachment 3 is hereby incorporated by reference and made a part of this CONTRACT.

11.3 BONDS

All bonds which may be required hereunder shall conform to CITY requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

ARTICLE 12 - INDEPENDENT CONTRACTORS

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

ARTICLE 13 - WARRANTIES AND RESPONSIBILITY OF THE CONTRACTOR

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

- 13.2 CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by CONTRACTOR under this AGREEMENT. CONTRACTOR shall, at no additional cost to CITY, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, calculations, and other services.
- 13.3 The CONTRACTOR shall exhibit proper professional judgment in the use of information furnished by CITY. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, CONTRACTOR will notify the CITY in a reasonable manner within three (3) business days after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.
- 13.4 CONTRACTOR shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.
- 13.5 Except as specified in Article 11 and as otherwise provided in this AGREEMENT, the CONTRACTOR shall be and shall remain liable, in accordance with APPLICABLE LAW, for all damages to CITY caused by CONTRACTOR'S negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to CITY, CITY-furnished data, or any third party.

ARTICLE 14 - SUBCONTRACTOR APPROVAL

All subcontracts in excess of \$20,000 shall require the prior approval of the CITY. A copy of all subcontracts shall be submitted to the CITY PROJECT MANAGER showing the SUBCONTRACTOR'S name and dollar amount of each subcontract. Wholly-owned subsidiaries of the CONTRACTOR shall not be considered subcontractors. CONTRACTOR shall not substitute subcontractors listed in this AGREEMENT without the prior written approval of the CITY. CONTRACTOR shall not add subcontractors to assist in the performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subcontractors, CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT. The CITY has the right to approve CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of SUBCONTRACTORS. The CITY does not have any obligation to pay CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS

ARTICLE 15 - NON-DISCRIMINATION

Unless otherwise exempt, this CONTRACT is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this CONTRACT, CONTRACTOR shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT.

Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S CONTRACT with the CITY. Nothing contained in this CONTRACT shall be construed in any manner so as to require or permit any act which is prohibited by law.

ARTICLE 16 - SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 35.

ARTICLE 17 - CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION

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

To CITY:

Emmanuel Alloh
Project Manager
City of Los Angeles - LA Sanitation
Hyperion Water Reclamation Plant
12000 Vista Del Mar
Playa Del Rey, CA 90293
Fax: (310) 648-5070
Email: Emmanuel.alloh@lacity.org

To CONTRACTOR:

Pamela K. Racey, Vice President of Business Development
Nursery Products, LLC.
435 Williams Court, Suite 100
Baltimore, MD 21220
Direct Phone: (410) 991-4169
Email: PRacey@synagro.com

ARTICLE 18 - OWNERSHIP AND LICENSE

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

For all Work Products delivered to the CITY that are not originated or prepared by CONTRACTOR or its SUBCONTRACTORS of any tier under this CONTRACT, CONTRACTOR hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.

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

Any subcontract entered into by CONTRACTOR relating to this CONTRACT, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT to contractually bind or otherwise oblige its SUBCONTRACTORS performing work under this CONTRACT such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S CONTRACT with the CITY.

ARTICLE 19 - FORCE MAJEURE

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

ARTICLE 20 - SEVERABILITY

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

ARTICLE 21 - DISPUTES

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

ARTICLE 22 - ENTIRE AGREEMENT

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

ARTICLE 23 - INTELLECTUAL PROPERTY INDEMNIFICATION

The CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or

contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONTRACTOR, or its SUBCONTRACTORS of any tier, in performing the work under this CONTRACT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONTRACTOR, or its SUBCONTRACTORS of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this CONTRACT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this article shall survive expiration or termination of this CONTRACT.

ARTICLE 24 - INTELLECTUAL PROPERTY WARRANTY

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

ARTICLE 25 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees.

This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. None of the parties to this AGREEMENT shall be considered to be the drafter of this AGREEMENT or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter. This AGREEMENT was drafted with substantial input by the parties.

All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONTRACTOR shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

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

ARTICLE 26 - EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this CONTRACT is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this CONTRACT, CONTRACTOR agrees and represents that it will provide equal employment practices and CONTRACTOR and each SUBCONTRACTORS 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. 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. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of 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, 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. 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 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 have been given to CONTRACTOR.
- F. Upon a finding duly made that 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. 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 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, CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONTRACTOR shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this CONTRACT, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- 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, 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. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with all such obligations shall subject

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.

ARTICLE 27 - AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this CONTRACT is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a CITY contract, CONTRACTOR certifies and represents that CONTRACTOR and each SUBCONTRACTORS hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. CONTRACTOR shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed, by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
- C. At the request of the Awarding Authority or the DAA, CONTRACTOR shall certify on an electronic or hard copy form to be supplied, that CONTRACTOR has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the Awarding Authority or the DAA, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of a CITY

contract. The failure shall only be established upon a finding to that effect by the Awarding Authority, on the basis of its own investigation or that of the DAA. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONTRACTOR.

- F. Upon a finding duly made that CONTRACTOR has breached the Affirmative Action Program provisions of a CITY contract, the CONTRACT may be forthwith cancelled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the said CONTRACTOR is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of the City of Los Angeles Administrative Code, et seq. In the event of such determination, such CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONTRACTOR has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONTRACTOR by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the DAA and provide to the Awarding Authority electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of CITY contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an Awarding Authority of the CITY to accomplish this contract compliance program.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. By affixing its signature to a Contract that is subject to this article, the CONTRACTOR shall agree to adhere to the provisions in this article for the duration of the CONTRACT. The Awarding Authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan.

1. The CONTRACTOR certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the CONTRACTOR's field of work. The CONTRACTOR shall:
 - (a) Recruit and make efforts to obtain employees through:
 - (i) Advertising employment opportunities in minority and other community news media or other publications.
 - (ii) Notifying minority, women and other community organizations of employment opportunities.
 - (iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.
 - (iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.
 - (v) Promoting after school and vacation employment opportunities for minority, women and other youth.
 - (vi) Validating all job specifications, selection requirements, tests, etc.
 - (vii) Maintaining a file of the names and addresses of each worker referred to the CONTRACTOR and what action was taken concerning the worker.
 - (viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the CONTRACTOR has a collective bargaining agreement, has failed to refer a minority, woman or other worker.
 - (b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.
 - (c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.
 - (d) Secure cooperation or compliance from the labor referral agency to the CONTRACTOR's contractual Affirmative Action Program obligations.
 - (e) Establish a person at the management level of the CONTRACTOR to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the CONTRACTOR's Equal Employment and Affirmative Action Program policies.
 - (f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.
 - (g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all

its operations and Contracts. The policies shall be provided to all employees, SUBCONTRACTORS, vendors, unions and all others with whom the CONTRACTOR may become involved in fulfilling any of its Contracts.

- (h) Document its good faith efforts to correct any deficiencies when problems are experienced by the CONTRACTOR in complying with its obligations pursuant to this article. The CONTRACTOR shall state:
 - (i) What steps were taken, how and on what date.
 - (ii) To whom those efforts were directed.
 - (iii) The responses received, from whom and when.
 - (iv) What other steps were taken or will be taken to comply and when.
 - (v) Why the CONTRACTOR has been or will be unable to comply.

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

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

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

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

- N. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by Contractors engaged in the performance of CITY Contracts.
- O. All CONTRACTORS subject to the provisions of this section shall include a similar provision in all subcontracts awarded for work to be performed under the CONTRACT with the CITY and shall impose the same obligations, including but not limited to, filing and reporting obligations, on the SUBCONTRACTORS as are applicable to the CONTRACTOR. Failure of the CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with all such obligations shall subject the CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONTRACTOR's CONTRACT with the CITY.

ARTICLE 28 - CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

If applicable, CONTRACTOR represents that it has obtained and presently holds the Business Tax Registration Certification(s) required by the CITY'S Business Tax Ordinance, section 21.00 *et seq.* of the Los Angeles Municipal Code (Attachment 2). For the term covered by this AGREEMENT, the CONTRACTOR shall maintain, or obtain as necessary, all such Certificates required of it under Business Tax Ordinance and shall not allow any such Certificate to be revoked or suspended. Should any such certificate(s) become suspended or revoked, it is the CONTRACTOR'S responsibility to report the matter immediately to the CITY PROJECT MANAGER.

ARTICLE 29 - CHILD SUPPORT ASSIGNMENT ORDERS

This CONTRACT is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONTRACTOR will fully comply with all applicable State and Federal employment reporting requirements for CONTRACTOR'S employees. CONTRACTOR shall also certify (1) that the Principal Owner(s) of CONTRACTOR are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that CONTRACTOR will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, *et seq.* of the California Family Code; and (3) that CONTRACTOR will maintain such compliance throughout the term of this CONTRACT.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully

served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONTRACTOR to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this CONTRACT, subjecting this CONTRACT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the CITY.

Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT. Failure of CONTRACTOR to obtain compliance of its SUBCONTRACTORS shall constitute a default by CONTRACTOR under this CONTRACT, subjecting this CONTRACT to termination where such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the CITY.

CONTRACTOR certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

ARTICLE 30 - WORKER RETENTION ORDINANCE AND LIVING WAGE ORDINANCE

A. Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 et seq. of the Los Angeles Administrative Code, as amended from time to time, which is attached hereto as Attachment 7 and incorporated herein by this reference, and the Worker Retention Ordinance (WRO), Section 10.36 et seq., of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:

1. The CONTRACTOR assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.
2. The CONTRACTOR further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONTRACTOR shall require each of its SUBCONTRACTORS within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONTRACTOR shall receive and retain on file the executed pledges from each such SUBCONTRACTORS within ninety (90) days of the execution of the Subcontract. CONTRACTOR'S evidence of executed pledges from each such SUBCONTRACTORS shall fully discharge the obligation of the

CONTRACTOR to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.

3. The CONTRACTOR, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONTRACTOR shall post the Notice of Prohibition Against Retaliation provided by the CITY.
4. Any Subcontract entered into by the CONTRACTOR relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the WRO, and shall incorporate the LWO and the SCWRO.
5. The CONTRACTOR shall comply with all rules, regulations and policies promulgated by the CITY'S Designated Administrative Agency, which may be amended from time to time.

B. Under the provisions of Section 10.36.3(c) and Section 10.37.6(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate circumstances, to terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONTRACTOR has violated provisions of the LWO and the WRO or both.

C. Where under the LWO Section 10.37.6(d), the CITY'S Designated Administrative Agency has determined (a) that the CONTRACTOR is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the CITY in such circumstances may impound monies otherwise due the CONTRACTOR in accordance with the following procedures. Impoundment shall mean that from monies due the CONTRACTOR, the CITY may deduct the amount determined to be due and owing by the CONTRACTOR to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d) (3) and disposed of under procedures there described through final and binding arbitration. Whether the CONTRACTOR is to continue work following an impoundment shall remain in the sole discretion of the CITY. The CONTRACTOR may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.

D. The CONTRACTOR shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). CONTRACTOR shall also make available to employees the forms informing them

about the EIC and forms required to secure advance EIC payments from CONTRACTOR.

ARTICLE 31 - AMERICANS WITH DISABILITIES ACT

The CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act 42 U.S.C. Section 12101 et seq. and its implementing regulations. The CONTRACTOR will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. The CONTRACTOR will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by the CONTRACTOR, relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

ARTICLE 32 – LOS ANGELES BUSINESS INCLUSION PROGRAM

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women, Small, Emerging, Disabled Veteran and Other Business Enterprise (MBE/WBE/SBE/EBE/DVBE/OBE) firms on a level so designated in its proposal, if any. CONTRACTOR certifies that it has complied with Mayoral Executive Directive 14 regarding the Outreach Program for Personal Services Contracts. CONTRACTOR shall not change any of these designated SUBCONTRACTORS, nor shall CONTRACTOR reduce their level of effort, without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld.

CONTRACTOR agrees and obligates itself to submit a signed MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, provided herein as [Attachment 6], for each invoice as described in Article 9, listing current MBE/WBE/SBE/EBE/DVBE/OBE amounts invoiced as part of the invoicing procedures.

ARTICLE 33 - EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this CONTRACT is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time. (Attachment 4)

- A. During the performance of the CONTRACT, the CONTRACTOR certifies and represents that the CONTRACTOR will comply with the EBO.
- B. The failure of the CONTRACTOR to comply with the EBO will be deemed to be a material breach of this CONTRACT by the CITY.

- C. If the CONTRACTOR fails to comply with the EBO, the CITY may cancel, terminate or suspend this CONTRACT, in whole or in part, and all monies due or to become due under this CONTRACT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONTRACTOR in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.
- E. If the CITY'S Designated Administrative Agency determines that a CONTRACTOR has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the CONTRACT. Violation of this provision may be used as evidence against CONTRACTOR in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

The CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-2625."

ARTICLE 34 – SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as may be amended from time to time, which is attached hereto as Attachment 8 and incorporated herein by this reference. CONTRACTOR certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this AGREEMENT.

ARTICLE 35 - WAIVER

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

ARTICLE 36 - PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

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

- (a) Assign or otherwise alienate any of its rights hereunder, including the right to payment; or
- (b) Delegate, subcontract, or otherwise transfer any of its duties hereunder.

ARTICLE 37 - DISCOUNT TERMS

CONTRACTOR agrees to offer the CITY any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discounts to payments made under this AGREEMENT which meet the discount terms.

ARTICLE 38 - CONTRACTOR PERFORMANCE EVALUATION

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

ARTICLE 39 - CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this CONTRACT is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of the Los Angeles Administrative Code, as amended from time to time, which requires CONTRACTOR to update its responses to the responsibility questionnaire within thirty (30) CALENDAR DAYS after any change to the responses previously provided if such change would affect CONTRACTOR'S fitness and ability to continue performing this CONTRACT. (Attachment 1)

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this CONTRACT, CONTRACTOR pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this CONTRACT, including but

not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONTRACTOR further agrees to: (1) notify the CITY within thirty (30) CALENDAR DAYS after receiving notification that any government agency has initiated an investigation which may result in a finding that CONTRACTOR is not in compliance with all applicable federal, state and local laws in performance of this CONTRACT; (2) notify the CITY within thirty (30) CALENDAR DAYS of all findings by a government agency or court of competent jurisdiction that CONTRACTOR has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its SUBCONTRACTOR(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its SUBCONTRACTOR(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the CITY within thirty (30) CALENDAR DAYS after any government agency or court of competent jurisdiction has initiated an investigation or has found that the SUBCONTRACTORS has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

ARTICLE 40 - BREACH

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

ARTICLE 41 - PERMITS

The CONTRACTOR and its directors, officers, partners, agents, employees, and SUBCONTRACTORS, to the extent allowed hereunder, shall obtain and maintain all permits, licenses, certifications, and other documents necessary for the CONTRACTOR'S performance of the services hereunder and shall pay any fees required therefore. CONTRACTOR certifies to immediately notify within two (2) business days, the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

ARTICLE 42 - CLAIMS FOR LABOR AND MATERIALS

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 CITY property (including reports, documents, and other tangible matter produced by the CONTRACTOR 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.

ARTICLE 43 - MUNICIPAL LOBBYING ORDINANCE

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

ARTICLE 44 - FIRST SOURCE HIRING ORDINANCE

Unless otherwise exempt in accordance with the provisions of this Ordinance, this CONTRACT is subject to the applicable provisions of the First Source Hiring Ordinance (FSHO), Section 10.44 et seq. of the Los Angeles Administrative Code, as amended from time to time. (Attachment 12)

CONTRACTOR shall, prior to the execution of the CONTRACT, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONTRACTOR estimate they will need to fill in order to perform the services under the CONTRACT. The Department of Public Works Office of Contract Compliance is the DAA.

CONTRACTOR further pledges that it will, during the term of the CONTRACT, shall a) At least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Economic Workforce and Development Department (EWDD), which will refer individuals for interview; b) Interview qualified individuals referred by EWDD; and c) Prior to filling any employment opportunity, the CONTRACTOR shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONTRACTOR interviewed and the reasons why referred individuals were not hired.

Any Subcontract entered into by the CONTRACTOR relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.

CONTRACTOR shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the Designated Administrative Agency has determined that the CONTRACTOR intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los

Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the CONTRACTOR'S subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the CITY'S authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this CONTRACT and otherwise pursue legal remedies that may be available if the Designated Administrative Agency determines that the subject CONTRACTOR has violated provisions of the FSHO.

ARTICLE 45 - COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12) FOR MEASURE H/CONTRACTOR CONTRIBUTIONS/FUNDRAISING

The CONTRACTOR, SUBCONTRACTORS, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected CITY officials or candidates for elected CITY office if the contract is valued at \$100,000 or more and requires approval of a CITY elected official. Additionally, CONTRACTOR is required to provide and update certain information to the CITY as specified by law. Any CONTRACTOR subject to Charter Section 470(c)(12), shall include the following notice in any contract with a SUBCONTRACTORS expected to receive at least \$100,000 for performance under this CONTRACT: (Attachment 13)

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are subcontractor on City of Los Angeles contract #_____. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to contractor within 5 business days. Failure to comply may result in termination of contract or any other available legal remedies includes fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213/978-1960.

CONTRACTOR, SUBCONTRACTORS, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the CITY to terminate this AGREEMENT and pursue any and all legal remedies that may be available.

ARTICLE 46 - IRAN CONTRACTING ACT OF 2010

In accordance with California Public Contract Code Sections 2200-2208, all bidders submitting proposals for, entering into, or renewing contracts with the City of Los Angeles for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the Iran Contracting Act of 2010 Compliance Affidavit. (Attachment 14)

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

CITY OF LOS ANGELES

By: _____

Title: Commissioner, Board of Public Works

Date: _____

By: _____

Title: Commissioner, Board of Public Works

Date: _____

NURSERY PRODUCTS, LLC.

By:  _____

ROBERT PRESTON

Title: President and CEO

Date: 5/20/18

APPROVED AS TO FORM

MICHAEL N. FEUER, City Attorney

By:  _____

Adena Hopenstand

Title: Deputy City Attorney

Date: 5/24/18

ATTEST:

HOLLY WOLCOTT, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____