

TRANSMITTAL NO. 1

AMENDMENT TO MEMORANDUM OF AGREEMENT
BY AND AMONG THE CITY OF LOS ANGELES, BY AND THROUGH
LOS ANGELES SANITATION AND ENVIRONMENT AND
LOS ANGELES DEPARTMENT OF WATER AND POWER, AND
METABOLIC STUDIO LLC

REGARDING THE OPERATION AND MAINTENANCE OF THE
LOS ANGELES RIVER DIVERSION AND APPURTENANT STRUCTURES
CONSTRUCTED AS PART OF METABOLIC STUDIO'S "BENDING THE RIVER BACK
INTO THE CITY" PROJECT

This AMENDMENT TO MEMORANDUM OF AGREEMENT ("AGREEMENT") is made and entered into as of the date of the last signature set forth below ("EFFECTIVE DATE") by the City of Los Angeles (City), by and through Los Angeles Sanitation and Environment ("LASAN") and the Los Angeles Department of Water and Power ("LADWP"), and METABOLIC STUDIO LLC, a Delaware limited liability company ("METABOLIC STUDIO"), collectively referred to herein as the PARTIES or individually as PARTY, with respect to the following:

RECITALS

WHEREAS, artist Lauren Bon of METABOLIC STUDIO is designing the "Bending the River Back into the City" Project ("PROJECT"); and

WHEREAS, METABOLIC STUDIO will fund the construction, operation, and maintenance of all components of the PROJECT; and

WHEREAS, pursuant to Water Right Permit 21342 ("BON PERMIT") issued by the State Water Resources Control Board on March 7, 2014, attached hereto as Exhibit A, Lauren Bon has the right to divert up to 0.22 cubic feet per second of water from the Los Angeles River to a maximum of 106 acre-feet per year to irrigate 42.5 acres of land in Section 22, Township 1S, Range 13W, Base and Meridian SB; and

WHEREAS, the BON PERMIT expressly states that Lauren Bon's right is "SUBJECT TO PRIOR RIGHTS;" and

WHEREAS, such prior rights include the City's "prior and paramount pueblo right to the surface waters of the Los Angeles River," as set forth in the judgment entered in *The City of Los Angeles v. City of San Fernando, et al.*, Superior Court of the State of California for the County of Los Angeles, Case No. 650079, and the City's right to the reclaimed water it discharges to the Los Angeles River from its water treatment plants; and

WHEREAS, the PROJECT originally consisted of a rubber dam and appurtenant structures across the Los Angeles River; and

WHEREAS, on July 24, 2017, the PARTIES made and entered into a Memorandum of Agreement (“AGREEMENT No. C-131638”) regarding operation and maintenance of the PROJECT, including the rubber dam and appurtenant structures; and

WHEREAS, on May 12, 2021, the PARTIES made and entered into a Memorandum of Agreement (“AGREEMENT No. C-138331”) with a revision to the PROJECT, which removed the rubber dam and replaced it with an intake structure, side channel, intake pipeline and outlet structure; and

WHEREAS, the PROJECT has since been revised, and now consists of a smaller approximately 2-foot by 3-foot screened inlet from the low flow channel of the Los Angeles River, a 300-foot long, 42-inch diameter vitrified clay pipe, a 12-inch diameter pipe inside a 36-inch diameter steel casing connecting river water to a fully lined stilling well on METABOLIC STUDIO property, and a water treatment and distribution system to deliver, free of charge, to the Los Angeles State Historic Park and the Los Angeles Department of Recreation and Parks, treated water to locations on both sides of the River. These facilities are within and adjacent to the Los Angeles River near the N. Broadway and N. Spring Street bridges (depicted on Overall Site Plan, Exhibit B); and

WHEREAS, the intake structure will be installed approximately 200 feet upstream of the METABOLIC STUDIO property located at 1745 North Spring Street, Unit #4, Los Angeles, California 90012 (“PREMISES”), with the intake pipeline connecting to the PREMISES buried beneath the Los Angeles River channel; and

WHEREAS, the intake structure is intended to operate during periods of dry-weather flow, and is designed not to impede the flood control function of the Los Angeles River channel; and

WHEREAS, METABOLIC STUDIO desires LASAN to operate and maintain the intake structure, intake pipeline, and other in-river appurtenances on METABOLIC STUDIO’s behalf and at METABOLIC STUDIO’s expense; and

WHEREAS, METABOLIC STUDIO has the option to authorize LASAN to operate and maintain other PROJECT components in addition to the intake structure, intake pipeline, and other in-river appurtenances; and

WHEREAS, the City Charter grants the Board of Water and Power Commissioners possession, control, and management of the City’s rights-of-way, sites, facilities, and property used for the capture, transportation, distribution and delivery of water for the benefit of the City, its inhabitants and its customers, and the right to supply and distribute reclaimed water to customers served by the City within the City’s limits; and

WHEREAS, the PARTIES seek an amendment of the AGREEMENT No. C-138331 to reflect these further revisions and operation and maintenance of the revised PROJECT, and to establish the rights and obligations of each PARTY; and

WHEREAS, this AGREEMENT supersedes AGREEMENT Nos. C-131638 and C-138331.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the PARTIES do hereby agree as follows:

Section 1. Recitals.

The recitals set forth above are fully incorporated as part of this AGREEMENT.

Section 2. Purpose.

The purpose of this AGREEMENT is to establish the responsibilities of the PARTIES with respect to the operation, maintenance, and financial obligations related to the PROJECT.

Section 3. Cooperation.

The PARTIES shall cooperate with one another to attain the purposes of this AGREEMENT.

Section 4. Voluntary Nature.

This AGREEMENT is entered into by the PARTIES voluntarily.

Section 5. Term.

The term of this AGREEMENT shall be for fifty (50) years, as of the EFFECTIVE DATE of this AGREEMENT, subject to Section 12 of this AGREEMENT (Termination of Agreement), after which term the AGREEMENT shall terminate. The AGREEMENT may be extended, through a written amendment, for an additional term of up to fifty (50) years if agreed upon by the PARTIES in writing.

Section 6. Role of METABOLIC STUDIO.

METABOLIC STUDIO agrees:

- a) To obtain all permits, approvals, and environmental documents necessary for the construction and operation of the PROJECT.
- b) To design and construct the PROJECT.
- c) To allow the City to review the PROJECT design specifications and any manufacturer materials and warranties related to the PROJECT.

- d) To design and construct the PROJECT to allow LASAN to have flow control capability over the PROJECT at all times.
- e) To allow LASAN, or third party selected by LASAN, to operate and perform maintenance of the intake structure, intake pipeline, and other in-river appurtenances, as well as other components of the PROJECT that METABOLIC STUDIO and LASAN agree to include.
- f) To provide LASAN access to the PREMISES and appurtenant structures and facilities for operation and maintenance for the duration of this AGREEMENT, subject to terms and conditions agreeable to METABOLIC STUDIO upon sufficient notice by LASAN. The notice can be either oral or written within 24 hours of access to PREMISES.
- g) To pay all actual costs incurred by LASAN associated with the operation and maintenance of the PROJECT pursuant to this AGREEMENT including, but not limited to, LASAN's administrative costs and necessary repairs and replacement of the PROJECT and components, as invoiced by LASAN. All operations, maintenance and related administrative costs shall be tracked and documented by LASAN and provided to METABOLIC STUDIO pursuant to Section 10 (Invoice and Payment).
- h) To pay LASAN's cost to operate and maintain the PROJECT in a manner substantially similar to the Scope of Services included as Exhibit C or at an appropriate level determined by LASAN and METABOLIC STUDIO based on actual needs.
- i) To review, inspect and approve in writing all repair work performed by LASAN and the City.

Section 7. Role of LASAN.

LASAN agrees:

- a) To review the PROJECT design specifications and manufacturer materials and warranties in connection with the PROJECT.
- b) To operate and maintain the PROJECT in a manner substantially similar to the Scope of Services included as Exhibit C or at an appropriate level determined by LASAN based on actual needs.
- c) To operate and maintain any additional PROJECT components that METABOLIC STUDIO assigns at an appropriate level based on mutually established service needs.

- d) To document all costs and include documentation pursuant to Section 10 (Invoice and Payment).

Section 8. Role of LADWP.

LADWP agrees:

- a) To participate in this AGREEMENT pursuant to the City Charter.
- b) To allow for LASAN's and METABOLIC STUDIO'S operation and maintenance of the intake structure, intake pipeline, and other in-river appurtenances and other related PROJECT components pursuant to this AGREEMENT so long as such complies with the BON PERMIT and all applicable laws and regulations.

Section 9. Additional Provisions.

It is mutually understood and agreed:

If property of a PARTY is damaged by another PARTY, or any person entering the PREMISES with the consent of that PARTY, either expressed or implied, that PARTY shall replace or repair the damaged property within a reasonable time to the satisfaction of the harmed PARTY or, at the harmed PARTY's sole discretion, compensate the harmed PARTY for the damage within ninety (90) days of billing.

It is understood that the operation of the PROJECT (outlined in Exhibit C) is subordinate to the flood control purposes of the Los Angeles River channel and that activities covered in this AGREEMENT shall in no way conflict with these purposes. It is further understood and agreed that the U.S. Army Corps of Engineers and the Los Angeles County Flood Control District may temporarily suspend the operation of the PROJECT for flood control purposes for any length of time necessary in order to allow the performance by these agencies, its officers, agents, invitees, and employees of activities necessary to protect life, property, or the PROJECT from damage at their sole discretion. Neither LASAN nor LADWP shall be liable to METABOLIC STUDIO in the event the operation of the PROJECT is suspended.

Following construction of the PROJECT, METABOLIC STUDIO will update Exhibit C and the overall operations and maintenance plan to reflect the conditions of the completed PROJECT. After a year of operations and maintenance, METABOLIC STUDIO and LASAN will cooperatively work to refine Exhibit C and the operations and maintenance plan. Any substantive revisions to this AGREEMENT, including Exhibit C hereto, shall be subject to Section 13e (Amendment).

Section 10. Invoice and Payment.

Pursuant to Sections 6 and 7 of this AGREEMENT (Role of METABOLIC STUDIO and Role of LASAN), METABOLIC STUDIO shall pay LASAN for the cost of operations and

maintenance performed by LASAN or its subcontractors. LASAN shall prepare and submit to METABOLIC STUDIO a budget estimating its costs for the succeeding year. METABOLIC STUDIO shall pay those estimated costs within sixty (60) days of receipt. Within thirty (30) days of the conclusion of the budget year, any difference between METABOLIC STUDIO'S payment and actual costs incurred by LASAN shall be reconciled, with overpayments credited toward the costs of the next budget year and underpayments paid to LASAN. LASAN will track the actual costs and provide quarterly statements to METABOLIC STUDIO documenting costs incurred by LASAN over the previous quarter. Underpayment will be invoiced as part of the quarterly statement to be paid by METABOLIC STUDIO. METABOLIC STUDIO shall pay the submitted invoice within sixty (60) days of receipt. LASAN will provide METABOLIC STUDIO with annual statements that specify the cost incurred by LASAN. The first invoice is anticipated to be sent to METABOLIC STUDIO for fiscal year 2024-25 in anticipation of PROJECT completion of September 2024. Subsequent invoices will be sent at the beginning of each fiscal year.

Section 11. Indemnification and Insurance.

- a) To the fullest extent permitted by law, LASAN and METABOLIC STUDIO agree to save, indemnify, defend, and hold one another harmless from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs of any nature without restriction incurred in relation to, as a consequence of, or arising out of, the performance of this AGREEMENT, and attributable to the negligence of such indemnifying PARTY. Following a determination of the percentage of fault and or liability by agreement between LASAN and METABOLIC STUDIO or a court of competent jurisdiction, the PARTY responsible for liability to the other will indemnify the other PARTY to this AGREEMENT for the percentage of liability determined.

Notwithstanding any other provision of this agreement, METABOLIC STUDIO shall indemnify, defend, and hold harmless LASAN and its respective officers and employees from and against any claims, demands, liability, damages, costs and expenses, including, without limitation, attorney fees and costs of litigation and claims involving bodily injury, death or personal injury of any person or property damage of any nature whatsoever, arising out of the operation and/or maintenance performed by LASAN of the PROJECT. This indemnification shall apply except to the extent that the claims, demands, liability or damages arise from the negligence, recklessness or willful misconduct of LASAN or its respective officers, employees, agents contractors or subcontractors.

Likewise, notwithstanding any other provision of this agreement, LASAN shall indemnify, defend, and hold harmless METABOLIC STUDIO and its respective officers and employees from and against any claims, demands, liability, damages, costs and expenses, including, without limitation, attorney fees and

costs of litigation and claims involving bodily injury, death or personal injury of any person or property damage of any nature whatsoever, arising out of the operation and maintenance by LASAN of the PROJECT. This indemnification shall apply except to the extent that the claims, demands, liability or damages arise from the negligence, recklessness or willful misconduct of METABOLIC STUDIO or its respective officers, employees, agents contractors or subcontractors.

LADWP does not assume any financial or other obligations under this AGREEMENT. LADWP does not give any PARTY any indemnity of any kind in connection with this AGREEMENT or the work performed hereunder, and no such indemnity shall be implied by the terms of this AGREEMENT, the conduct of the PARTY, the relationship of the PARTIES or otherwise.

- b) During the term of this AGREEMENT and without limiting METABOLIC STUDIO'S indemnification of LASAN and LADWP, METABOLIC STUDIO shall provide and maintain at its own expense a program of insurance having the coverage and limits customarily carried and actually arranged, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit D hereto), covering the City, as well as its operations hereunder. Such insurance shall conform to requirements established by the City Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit D hereto) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. METABOLIC STUDIO shall comply with all Insurance Requirements shown on Exhibit D, which is hereby incorporated by reference and made a part of this AGREEMENT.

Section 12. Termination of Agreement.

Notwithstanding other provisions of this AGREEMENT, any PARTY may terminate this AGREEMENT upon one hundred eighty (180) days prior written notice to the other PARTIES for any reason, including for breach of a PARTY's obligation(s) under the AGREEMENT. Failure to perform any provision, covenant or condition of this AGREEMENT shall not be deemed a breach if cured within thirty (30) days of written notice of breach. The PARTY claiming breach shall notify the other PARTIES in writing, identifying the breach, and provide thirty (30) days to cure the breach.

Section 13. General Provisions.

- a) Notices. All notices herein that are to be given or that may be given by any PARTY shall be in writing and shall be deemed to have been given three (3) business days after deposit in the U.S. Mail addressed as follows:

To LASAN:

Michael Scaduto, Principal Engineer
LA Sanitation and Environment
1149 South Broadway, 10th floor
Los Angeles, California 90015
Attention: Ida Meisami
Phone No.: (213) 485-3981

To LADWP:

David Pettijohn, Director of Water Resources
Los Angeles Department of Water and Power
111 North Hope Street, Room 1460
Los Angeles, California 90012
Phone No.: (213) 367-0899

To METABOLIC STUDIO:

Lauren Bon
METABOLIC STUDIO, LLC
1745 North Spring Street, Unit 4
Los Angeles, California 90012
Attention: John Yi
Phone No.: (917) 623-0524

- b) Administration. For the purposes of this AGREEMENT, the PARTIES hereby designate as their respective PARTY Representative, the person named in Section 13a of this AGREEMENT (Notices). The designated PARTY Representative, or his or her respective designee, shall administer the terms and conditions of this AGREEMENT on behalf of his or her respective PARTY. Each of the persons signing below on behalf of a PARTY represents and warrants that they are authorized to sign this AGREEMENT on behalf of such PARTY.
- c) Relationship of Parties. The PARTIES are and shall remain at all times as to each other, wholly independent entities. No PARTY to this AGREEMENT shall have power to incur any debt, obligation, or liability on behalf of another PARTY unless expressly provided to the contrary by this AGREEMENT. No employee, agent, or officer of a PARTY shall be deemed for any purpose whatsoever to be an agent, employee, or officer of another PARTY.
- d) Binding Effect. This AGREEMENT shall be binding upon and inure to the benefit of each PARTY to this AGREEMENT and their respective heirs, administrators, representatives, successors and assigns.

- e) Amendment. Amendments, changes or modifications in the terms of this AGREEMENT may be made at any time by mutual written agreement between and among the PARTIES and shall be signed by the persons authorized to bind the PARTIES thereto.
- f) Waiver. Waiver by any PARTY to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any PARTY to any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT.
- g) Law to Govern; Venue. This AGREEMENT shall be interpreted, construed, and governed according to the laws of the State of California. In the event of litigation between the PARTIES, venue in the state trial courts shall lie exclusively in the County of Los Angeles.
- h) No Presumption in Drafting. The PARTIES to this AGREEMENT agree that the general rule that an agreement is to be interpreted against the party drafting it, or causing it to be prepared, shall not apply.
- i) Attorneys' Fees and Costs. The PARTIES agree that in any action to enforce the terms of this AGREEMENT, each PARTY shall be responsible for its own attorneys' fees and costs.
- j) Entire Agreement. This AGREEMENT constitutes the entire agreement of the PARTIES with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, whether written or oral, with respect thereto.
- k) Severability. If any term, provision, condition, or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and this AGREEMENT shall be read and constructed without the invalid, void, or unenforceable provision(s).
- l) Counterparts. This AGREEMENT may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute but one and the same instrument, provided, however, that such counterparts shall have been delivered to all PARTIES to this AGREEMENT.
- m) Representation by Counsel. The PARTIES have been represented by counsel in the preparation and negotiation of this AGREEMENT. Accordingly, this AGREEMENT shall be construed according to its fair language.

IN WITNESS WHEREOF, each PARTY hereto has caused the AGREEMENT to be executed by its duly authorized representative.

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS

By: _____
MARTIN L. ADAMS
General Manager and Chief Engineer

Date: _____

And: _____
CHANTE L. MITCHELL
Board Secretary

