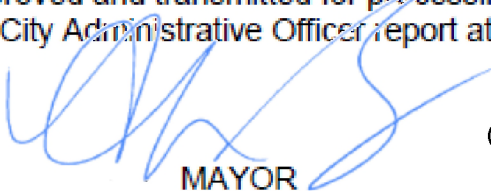


TRANSMITTAL

0150-11553-0000
0150-11553-0000

TO The Council	DATE 08/18/20	COUNCIL FILE NO.
FROM The Mayor		COUNCIL DISTRICT
<p>Memorandum of Agreement Between the Bureau of Sanitation, the Los Angeles Department of Water and Power, and Metabolic Studio LLC for the Operation and Maintenance of Metabolic Studio's "Bending the River Back into the City" Project.</p> <p>Approved and transmitted for processing. See the City Administrative Officer report attached.</p> <p> MAYOR</p> <p>(Ana Guerrero for)</p> <p>RHL:JPQ:10200096t</p>		

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: 7-30-20	C.D. No.	CAO File No.: 0150-11553-0000
Contracting Department/Bureau: Bureau of Sanitation		Contact: Kosta Kaporis, (213) 485-0586	
Reference: Transmittal from the Board of Public Works dated November 27, 2019; referred for report on December 4, 2019			
Purpose of Contract: To provide operation and maintenance for Metabolic Studio's "Bending the River Back into the City" project.			
Type of Contract: (X) New contract () Amendment, Contract No. [C-XXXXXX]		Contract Term Dates: 50 years from the date of execution, plus a renewal option of 50 years.	
Contract/Amendment Amount: \$0			
Proposed amount \$0 + Prior award(s) \$0 = Total \$0			
PSource of funds: Stormwater Pollution Abatement Fund No. 511			
Name of Contractor: Metaolic Studio, LLC			
Address: 1745 N. Spring Street, Unit #4, Los Angeles, CA 90012			
	Yes	No	N/A
1. Council has approved the purpose	X		
2. Appropriated funds are available	X		
3. Charter Section 1022 findings completed			X
4. Proposals have been requested			X
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included			X
7. Workforce that resides in the City: N/A			
8. Business Inclusion Program			X
9. Equal Benefits & First Source Hiring Ordinances			X
10. Contractor Responsibility Ordinance			X
11. Slavery & Border Wall Disclosure Ordinances			X
12. Bidder Certification CEC Form 50			X
13. Prohibited Contributors (Bidders) CEC Form 55			X
14. California Iran Contracting Act of 2010			X

RECOMMENDATION

That the Mayor authorize the Director of the Bureau of Sanitation, or designee, to execute a Memorandum of Agreement with the Los Angeles Department of Water and Power and Metabolic Studio LLC for the operation and maintenance of the "Bending the River Back into the City" project for a term of 50 years, with a renewal option of an additional 50 years, subject to approval of the City Attorney and compliance with the City's contracting requirements.

SUMMARY

In accordance with Executive Directive 3, the Board of Public Works (Board), on behalf of the Bureau of Sanitation (Bureau), requests authority to execute a Memorandum of Agreement (Agreement) with the Los Angeles Department of Water and Power (LADWP) and Metabolic Studio LLC (Metabolic Studio) for the operation and maintenance of the Los Angeles River (LA River) diversion and appurtenances constructed as part of Metabolic Studio's "Bending the River Back into the City" project (Project). In accordance with the Los Angeles Administrative Code Section 10.5, Council approval is needed as the Agreement is for a term longer than three years.

Jessica Quach			 City Administrative Officer
JPQ	Analyst	10200019	

Background

In 2017, the Bureau, the LADWP, and Metabolic Studio entered into a previous agreement (C.F. 14-0254, C-131638) for the operation and maintenance of a rubber dam and related appurtenances as part of the Project. The rubber dam would span a portion of the LA River in order to divert water to the waterwheel, power the waterwheel, be treated to appropriate water standards and then returned back into the LA River. Since then, the project scope has changed to replace the rubber dam with a low-flow diversion structure and to add a water distribution system for irrigation purposes. A portion of the diverted water will be used to irrigate, at no cost to the owners, properties surrounding the waterwheel including the Los Angeles State Historic Park and those operated by the Los Angeles Department of Recreation and Parks (RAP). A separate Memorandum of Agreement with RAP will address the irrigated water portion of the Project. The proposed Agreement will replace C-131638.

The Project scope includes a low-flow diversion structure, intake pipeline, waterwheel, water pit, treatment, storage and distribution system, discharge outlet, and screen that will be constructed within the LA River and Metabolic Studio's property, adjacent to the LA River. Water will be diverted from the river, used to power the waterwheel, treated to acceptable use standards, and returned back to the river. A portion of the diverted water will be used for irrigation purposes.

On March 7, 2014 the State Water Resources Control Board issued Permit No. 21342 (the Bon Permit) to Lauren Bon which allows for the use of 0.22 cubic feet per second (CFS) and a maximum of 106 acre-ft per year of water from the LA River. As the City owns a prior and paramount water right in the LA River, the Bon permit is junior to City's water rights. In addition, as the water in the LA River also contains discharged water from the City's water reclamation plants, the City has authority to use the reclaimed water as needed. As the City develops other uses for the water in the Los Angeles River, Metabolic Studio may be required to cease use of the water until such time as the flows in the river exceed the City's needs. In addition, the Project shall in no way interfere with the flood control function of the LA River as it is designed to operate during dry-weather flow. In the event of a storm that is projected to have 0.2 inches or more of rain in a 24 hour period, the Bureau is expected to close the valves that lead into the intake pipe.

Proposed Agreement

Metabolic Studio has agreed to provide funding for the design, construction, and operation and maintenance of the Project as well as obtain all permits needed for construction. The Bureau is to provide review of the design specifications and manufacturer materials and warranties for the Project. Construction of the Project is expected to be completed in 2022. Once completed, the Bureau is expected to perform operation and maintenance activities on the in-river components such as inspection and repair of appurtenances and sediment removal. Exhibit C of the Agreement details the activities and frequency for which the Bureau is responsible. Metabolic Studio will pay for estimated costs within 60 days of receipt of the Bureau's annual cost estimate. The Bureau states the cost estimate for annual operation and maintenance is \$75,000. Funding will be deposited into the Stormwater Pollution Abatement Fund. The Bureau is to document all expenditures throughout the year and reconcile the actual costs with the estimate within 30 days of the fiscal year end. Any remaining funds are to be credited towards the next fiscal year. If the estimate is less than the actual cost, the difference will be funded through a subsequent payment from Metabolic Studio.

Participation in the Agreement is voluntary and the Agreement may be terminated 180 days after written notice to the other Parties. The Agreement contains indemnification clauses which protect the City and Metabolic Studio from holding each other responsible for damages or liability in relation to the Project. The LADWP is a Party to the Agreement pursuant to Charter Sections 672 and 677, which grants the Board of Water and Power Commissioners possession, management, and control of the City's water assets and authority to supply and distribute reclaimed water, respectively. As such, the LADWP will not have any financial, indemnity, or other obligations under the Agreement.

Charter Section 1022 and Contracting Restrictions

Charter Section 1022 and the City Ordinances required in the contracting process do not apply as this contract is for the Bureau's services.

In accordance with the Mayor's Cost-Containment Memo dated June 24, 2020, all new contracts are suspended unless an exception can be made. As Metabolic Studio has agreed to pay for all costs related to the Project and the Bureau states there is sufficient staff available, this Office recommends that the Agreement be exempted from the memo.

FISCAL IMPACT STATEMENT

There is no General Fund impact as Metabolic Studio has agreed to pay for the cost of the Project.

FINANCIAL POLICIES STATEMENT

The recommendation in this report complies with the City's financial policies as there are sufficient funds budgeted to support expenditures.

BOARD OF PUBLIC WORKS
MEMBERS

KEVIN JAMES
PRESIDENT

AURA GARCIA
VICE PRESIDENT

DR. MICHAEL R. DAVIS
PRESIDENT PRO TEMPORE

JESSICA CALOZA
COMMISSIONER

M. TERESA VILLEGAS
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>

December 4, 2019

BPW-2019-0975

The Honorable Mayor Garcetti
Room No. 320
City Hall
Attn: Heleen Ramirez

MEMORANDUM OF AGREEMENT - OPERATION AND MAINTENANCE OF THE LOS ANGELES RIVER WATER WHEEL PROJECT

As recommended in the accompanying report of the Directors of the Bureau of Sanitation, which this Board has adopted, the Board of Public Works (Board) recommends that the City Council, subject to concurrence of the Mayor:

1. APPROVE and authorize the President or two members of the Board of Public Works, the Director, and General Manager of the Bureau of Sanitation, or designee, to execute the proposed Memorandum of Agreement (MOA) between Bureau of Sanitation, Los Angeles Department of Water and Power, and Metabolic Studio LLC for the Los Angeles River Water Wheel Project.

FISCAL IMPACT

There is no impact to the General Fund.

Sincerely,

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

FC:lc



DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION


BOARD REPORT NO. 2

NOVEMBER 27, 2019

CD: 1

ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California
AND REFERRED TO THE MAYOR
DEC 04 2019

AND REFERRED TO THE CITY COUNCIL


Executive Officer
Board of Public Works

AUTHORITY TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN LOS ANGELES SANITATION AND ENVIRONMENT, LOS ANGELES DEPARTMENT OF WATER AND POWER, AND METABOLIC STUDIO LLC FOR THE OPERATION AND MAINTENANCE OF THE LOS ANGELES RIVER WATER WHEEL PROJECT

RECOMMENDATIONS

1. Approve and forward this report with its transmittal to the Mayor and the City Council with the recommendation that the City Council, subject to concurrence of the Mayor, authorize the President or two members of the Board of Public Works (Board), and the Director and General Manager of Los Angeles Sanitation and Environment (LASAN), or designee, to execute the proposed Memorandum of Agreement (MOA) between LASAN, Los Angeles Department of Water and Power (LADWP), and Metabolic Studio LLC (Metabolic) for the Los Angeles River Water Wheel Project (Project).
2. Notify Kosta Kaporis of LASAN Watershed Protection Division (WPD) at 213-485-0586 when the MOA is ready to be executed by the Board, whereupon six original documents will be delivered to the Secretary of the Board for execution.
3. Upon execution, request the City Clerk to attest and certify the six original copies of the MOA. The City Clerk and the Board each are to retain one original copy, and return the remaining copies to WPD.

TRANSMITTAL

1. MOA between LASAN, LADWP, and Metabolic for the Project.

DISCUSSION

The purpose of the MOA is to establish a new agreement between LASAN, Metabolic Studio, and LADWP regarding the operation and maintenance of the Project. On July 24, 2017, the previous MOA No. C-131638 was established between LASAN, Metabolic, and LADWP for the operation and maintenance of the Los Angeles River Rubber Dam and Appurtenant Structures to be constructed as part of Metabolic's "Bending the River Back into the City" project. The Rubber Dam will no longer be constructed as part of this project; instead, a low flow diversion inlet facility will now be constructed. This new MOA supersedes and replaces the previous MOA. LADWP is a signatory to this MOA since LADWP has been acknowledged as the designated purveyor of water rights within the City of Los Angeles (City).

BUREAU OF SANITATION
BOARD REPORT NO. 2
NOVEMBER 27, 2019

Page 2

Metabolic is the entity implementing the Project. When the Project is completed, LASAN will operate and maintain the Project to be funded by Metabolic. A letter of intent by LASAN to operate and maintain the Project was sent to the U.S. Army Corps of Engineers (USACE) in January of 2016 to facilitate the permitting process.

As part of the Project, a low-flow diversion inlet facility will be constructed across the Los Angeles River between North Broadway and North Spring Street bridges to divert dry-weather flow out of the River. The diversion is intended to operate during periods of dry-weather, and is designed not to impede the flood control function of the Los Angeles River. The Project also includes an inlet pipeline, a water wheel, a wheel pit, a treatment, storage, and distribution system, and a discharge pipeline, structure, and screen, all within and adjacent to the Los Angeles River between the North Broadway and North Spring Street bridges. The low flow diversion and auxiliary structures will be maintained to provide maximum performance and provide preventative maintenance by conducting necessary facility upkeep. Work to be accomplished consists of maintenance, inspection, and repair. Operation and maintenance activities will include periodic sediment removal from within the diversion and discharge structures.

Metabolic has secured all required permits from the USACE and the State Water Resources Control Board (SWRCB) to implement this Project. Permit No. 21342 was issued by the SWRCB on March 7, 2014, and Metabolic has the right to divert for beneficial use up to 0.22 cubic feet per second of water from the Los Angeles River up to a maximum of 106 acre-feet per year.

Metabolic has completed the design of the Project. The construction of the Project is anticipated to start in 2020 and be completed by 2022. When the Project is completed, the MOA designates LASAN to operate and maintain the diversion, intake and outlet structures, and associated appurtenances as described in Exhibit C of the MOA. Metabolic will establish an endowment fund for payment of all costs to LASAN to operate and maintain the Project for a period of 50 years with an option to renew for another 50 years.

FISCAL IMPACT STATEMENT

The Project will not impact the City's General Fund. All expenses for the operation and maintenance of the Project will be paid by Metabolic. The initial estimate for the operation and maintenance cost is \$75,000 per year. Metabolic will be providing the estimated annual expense to LASAN and upon completion of the budget year the actual costs will be reconciled.

PROJECT ADMINISTRATION

The MOA will be administered by WPD of LASAN.

BUREAU OF SANITATION
BOARD REPORT NO. 2
NOVEMBER 27, 2019

Page 3

APPROVAL AS TO FORM

The MOA has been reviewed by Adena M. Hopenstand, Deputy City Attorney of the City Attorney's Office, and has been approved as to form.

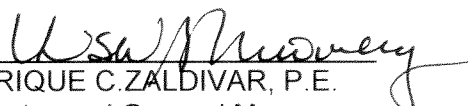
PROJECT REVIEW BY DIRECTOR (PRD) APPROVAL

PRD approval for LASAN to enter into an agreement with Metabolic was issued on March 1, 2017.

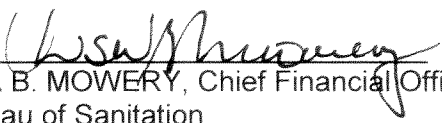
STATUS OF FINANCING

There is no impact to the General Fund. The project is fully funded by a third party, Metabolic Studio LLC.

Respectfully submitted,


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

REVIEWED AND APPROVED BY:


LISA B. MOWERY, Chief Financial Officer
Bureau of Sanitation
Date: 11-19-19

Prepared by:
Wing Tam, WPD
(213) 485-3985

MEMORANDUM OF AGREEMENT
BETWEEN 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 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, 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 of Los Angeles' "prior and paramount pueblo right to the surface waters of the Los Angeles River," as set forth in the judgment entered in *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 of Los Angeles' 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 rubber dam and appurtenant structures; and

WHEREAS, the PROJECT has been revised, and now consists of a low-flow channel, an intake structure, an intake pipeline – side channel, a water wheel, a wheel pit, and a return flow pipeline and outlet structure, and screen, all within and adjacent to the Los Angeles River between the N. Broadway and N. Spring Street bridges (depicted on Site Map, Exhibit B), and a water 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; and

WHEREAS, the intake structure will be installed approximately 2,200 feet upstream of the METABOLIC STUDIO property located at 1745 N. Spring Street, Unit #4, Los Angeles, CA 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 – side channel, return flow - outlet structure, and 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 besides the intake structure, intake pipeline – side channel, return flow - outlet structure, and appurtenances; and

WHEREAS, the City of Los Angeles Charter (“CITY CHARTER”) grants the Board of Water and Power Commissioners possession, control, and management of the City of Los Angeles’ 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 desire to enter into this AGREEMENT to establish the obligations of each PARTY; and

WHEREAS, this AGREEMENT supersedes AGREEMENT No. C-131638.

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 and maintenance and financial obligations related to the PROJECT.

Section 3. Cooperation.

The PARTIES shall fully 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.

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 of Los Angeles 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 – side channel, return flow - outlet structure, and appurtenances, as well as other components of the PROJECT that METABOLIC STUDIO chooses to include.

- f) To provide LASAN access to the PREMISES and appurtenant structures and facilities, including the intake structure, intake pipeline, wheel pit, treatment, storage, and distribution system, and return flow - outlet structure, 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 of Los Angeles.

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 LASAN's and METABOLIC STUDIO'S operation and maintenance of the intake structure, intake pipeline – side channel, return flow - outlet structure, 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 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 O&M plan to reflect the conditions of the completed PROJECT. After a year of operations and maintenance, METABOLIC STUDIO and LASAN will cooperatively work to again refine Exhibit C and the O&M plan. Any substantial 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 will be sent to METABOLIC STUDIO for fiscal year 2020-21 in anticipation of PROJECT completion of September 2021. 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 of Los Angeles, 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:

Wing Tam,
Project Director and Acting Watershed Program Division Manager
Los Angeles Sanitation and Environment
1149 South Broadway, 10th floor
Los Angeles, California 90015
Phone No.: (213) 485-3985
Fax: (213) 485-3939

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.

CITY OF LOS ANGELES
LOS ANGELES SANITATION AND
ENVIRONMENT

CITY OF LOS ANGELES
BOARD OF PUBLIC WORKS

Enrique C. Zaldivar Date
Director & General Manager

Kevin James Date
President

APPROVED AS TO FORM:
Michael N. Feuer, City Attorney

Adena M. Hopenstand Date
Deputy City Attorney

ATTEST:
Holly L. Wolcott, City Clerk

Deputy City Clerk Date

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: _____
SUSAN A. RODRIGUEZ
Secretary

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

METABOLIC STUDIO, LLC

Lauren Bon
Artist and Director

Date

EXHIBIT A
Bon Permit



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

MAR 07 2014

In Reply Refer to:
MSM:A032212

Lauren Bon
c/o Mark Hanna
Geosyntec Consultants
3415 S Sepulveda Blvd.
Los Angeles, CA 90034

Dear Mr. Hanna:

WATER RIGHT PERMIT 21342 (APPLICATION 32212) TO APPROPRIATE WATER FROM THE LOS ANGELES RIVER IN LOS ANGELES COUNTY

Your water right permit and any associated documents are enclosed. You should carefully read the permit and determine what requirements must be met: (1) before you begin building your project, (2) after building the project but prior to diverting water, (3) on an ongoing basis, such as monitoring the bypass flow, and (4) at a specified time after receiving the permit. It is your responsibility to keep accurate records of the diversion and use of water and keep the Division of Water Rights (Division) informed of your ongoing compliance with the water right terms. To do so, you should attach information (photographs, reports, monitoring data, etc.) showing that you are in compliance with your permit terms to the annual report that is required to be filed electronically with the Division. The Division will send you notifications and instructions for filing before the annual reports are due.

Every permit includes terms and conditions limiting the diversion of water. These terms and conditions may include, but are not limited to, a season of diversion, a diversion rate, and a maximum diversion volume and/or storage quantity. You should carefully monitor construction to ensure that your diversion works and/or reservoir do not exceed these limits. Water can only be diverted under this right while complying with all permit terms. It is a violation to divert water without meeting the terms and conditions of the right, and violations may be subject to enforcement.

There may be times when water is flowing in the stream, but you are not able to divert under the permit. In each watershed, the right holders must divert in accordance with the priority of their rights. The priority of the permit is the date that the application was filed, and is listed near the top of the permit. In times of water shortage, a junior right holder must stop diverting if there is not enough water to serve a more senior right. The water availability analysis prepared for your application likely describes conditions when there is either limited or no water for your use. You can determine the rates or quantities of water diverted under other rights in your watershed by reviewing the eWRIMS Web Mapping Application tab at the link:
http://www.waterboards.ca.gov/water_issues/programs/ewrims/

FELICIA MARCAIS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | www.waterboards.ca.gov

Lauren Bon
c/o Mark Hanna
A032212

- 2 -

MAR 07 2014

All right holders are required to pay annual water right fees. Notification of the fee is sent out by the California Board of Equalization. The fee bill is called a Notice of Determination, and must be paid promptly. Nonpayment of the fee may result in revocation of your water right.

Prior to making any changes in your point of diversion, place of use, purpose of use, or other conditions of water diversion, you must obtain the Division's approval. This is done by filing a change petition. If the change is approved, the Division will issue an amended permit. Then, the change can be implemented.

The permit contains a complete use date to complete construction and place water to beneficial use. Once the time to develop the water right has ended, you should plan on obtaining a license. A license confirms that the project was developed in compliance with the terms and conditions of the permit and the quantities of water put to beneficial use. Only water used in accordance with the conditions of the permit, or any amended permit, can be credited for licensing purposes. If the project has not been fully developed, a time extension may be requested. However, an extension can only be approved under specific, limited conditions. If you decide not to build the project, you should request revocation of the water right. Once a water right is revoked, it is not subject to annual fees.

Please inform the Division of any changes in address or ownership. The Division will mail all notices, including fee notices, to the most recent address supplied for the primary contact. The regulations require a right holder to immediately inform the Division of any change in ownership of the right. (Cal. Code Regs., tit. 23, § 830 et seq.) If you need to make these changes, please visit this web site: http://www.waterboards.ca.gov/waterrights/publications_forms/forms/index.shtml#addchange

The following web sites may contain information related to this water right:

(a) The permit may be viewed at:

http://www.waterboards.ca.gov/water_issues/programs/ewrims/license_search.shtml

(b) Division Decisions issued pursuant to a Field Investigation may be viewed at:


http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/division_decisions/

(c) State Water Board Decisions issued pursuant to a hearing are found at:

http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/decisions/

If you require further assistance, please contact Mitchell Moody at (916) 341-5383. Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Mitchell Moody, PO Box 2000, Sacramento, CA, 95812-2000.

Sincerely,


Amanda Montgomery, Manager
Permitting and Licensing Section
Division of Water Rights

Enclosures: (1) Permit; (2) Map

cc: See next page.

Lauren Bon
c/o Mark Hanna
A032212

- 3 -

MAR 07 2014

cc (w/enclosure): Lauren Bon
Metabolic Studio
1745 N Spring Street, Unit 4
Los Angeles, CA 90012

cc (w/o enclosures): The Honorable Eric Garcetti
Mayor of Los Angeles
200 N Spring Street, Room 303
Los Angeles, CA 90012

Regional Water Quality Control Board
Los Angeles Region
c/o Deborah Smith
320 W 4th Street, Suite 200
Los Angeles, CA 90013

California Department of Fish and Wildlife
South Coast Region
c/o Scott Harris
3883 Ruffin Road
San Diego, CA 92123

California Department of Fish and Wildlife
Water Branch
c/o James Rosauer
830 S Street
Sacramento, CA 95811



STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

RIGHT TO DIVERT AND USE WATER

APPLICATION 32212

PERMIT 21342

Right Holder:

Lauren Bon
1745 N. Spring Street, Unit 4
Los Angeles, CA 90012

The State Water Resources Control Board (State Water Board) authorizes the diversion and use of water by the right holder in accordance with the limitations and conditions herein **SUBJECT TO PRIOR RIGHTS**. The priority of this right dates from **October 24, 2013**. This right is issued in accordance with the State Water Board delegation of authority to the Deputy Director for Water Rights (Resolution 2012-0029) and the Deputy Director for Water Rights redelegation of authority dated July 6, 2012.

The Deputy Director for Water Rights finds that the State Water Board and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved protests in compliance with Water Code section 1330 et seq. and included appropriate permit conditions; (c) demonstrated that the water will be diverted and used without injury to any lawful user of water; (d) demonstrated that the intended use is beneficial; and (e) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA.

The State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].)

Right holder is hereby granted a right to divert and use water as follows:

1. Source of water: (1) **Los Angeles River**

tributary to: (1) **Pacific Ocean**

within the County of **Los Angeles**.

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 5	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
Inflatable Dam (1) North 1,848,272 feet and East 6,493,341 feet	SW ¼ of NE ¼	22*	1S	13W	SB

3. Purpose of use	4. Place of use					
	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	NE ¼ of SW ¼	22*	1S	13W	SB	6
	SE ¼ of NE ¼					4.5
	SW ¼ of NE ¼					10
	NW ¼ of SE ¼					2.5
	SE ¼ of NW ¼					2.0
	NE ¼ of SW ¼					17
	NW ¼ of SW ¼					0.5
					Total:	42.5

The place of use is shown on map dated October 24, 2013 on file with the State Water Board.

5. The water appropriated under this right shall be limited to the quantity which can be beneficially used and shall not exceed **0.22 cubic foot per second** by direct diversion to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this right shall not exceed **106 acre-feet per year**.
(0000005A)
6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2029.
(00000009)
7. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.
(0000208)
8. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles); and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; structure and feature remains such as building foundations, privy pits, wells, and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the right holder to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.
(0000215)

9. If human remains are encountered, right holder shall comply with Section 15064.5 (e) (1) of the State CEQA Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbance within 100 feet of the find shall be halted until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the Native American Heritage Commission to identify the most-likely descendants of the deceased Native Americans. Project-related ground disturbance in the vicinity of the find shall not resume until the process detailed under Section 15064.5 (e) has been completed and evidence of completion has been submitted to the Deputy Director for Water Rights.

(0380500)

10. Right holder shall comply with the following provisions which are derived from the Final Initial Study/Mitigated Declaration (SCH # 2013101041) as filed by the City of Los Angeles:

Consistent with the requirements of the statewide Construction General Permit, the project applicant shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP) designed to reduce potential adverse impacts on surface water quality through the project construction period. The SWPPP shall be designed based on the assessed Project Risk Level to address the following objectives: (1) all pollutants and their sources, including sources of sediment associated with construction, construction site erosion, and all other activities associated with construction activity are controlled; (2) where not otherwise required to be under a Regional Water Quality Control Board permit, all non-stormwater discharges are identified and eliminated, controlled, or treated; (3) site Best Management Practices (BMPs) are effective and result in the reduction or elimination of pollutants in storm water discharges and authorized non-stormwater discharges from construction activity to the Best Available Technology/Best Conventional Pollutant Control Technology (BAT/BCT) standard; (4) calculations and design details as well as BMP controls for site run-on are complete and correct; and (5) stabilization BMPs installed to reduce or eliminate pollutants after construction are completed.

(0400500)

11. No water shall be directly diverted under this right unless right holder is monitoring and reporting said diversion of water. This monitoring shall be conducted using devices and methods satisfactory to the Deputy Director for Water Rights. The devices shall be capable of monitoring the rate and quantity of water diverted and shall be properly maintained.

Right holder shall provide the Division of Water Rights with evidence that the devices have been installed with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the devices are functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Right holder shall maintain a record of all diversions under this right that includes the date, time, rate of diversion, and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

(000000R)

THIS RIGHT IS ALSO SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. Right holder is on notice that: (1) failure to timely commence or complete construction work or beneficial use of water with due diligence, (2) cessation or partial cessation of beneficial use of water, or (3) failure to observe any of the terms or conditions of this right, may be cause for the State Water Board to consider revocation (including partial revocation) of this right. (Cal. Code Regs., tit. 23, § 850.)
(0000016)
- B. Right holder is on notice that when the State Water Board determines that any person is violating, or threatening to violate, any term or condition of a right, the State Water Board may issue an order to that person to cease and desist from that violation. (Wat. Code, § 1831.)
(0000017)
- C. Right holder is not authorized to make any modifications to the location of diversion facilities, place of use or purposes of use, or make other changes to the project that do not conform with the terms and conditions of this right, prior to submitting a change petition and obtaining approval of the State Water Board.
(0000018)
- D. Once the time to develop beneficial use of water ends under this permit, right holder is not authorized to increase diversions beyond the maximum annual amount diverted or used during the authorized development schedule prior to submitting a time extension petition and obtaining approval of the State Water Board.
(0000019)
- E. The amount of water for consideration when issuing a license shall be limited to only the amount of water diverted and applied to beneficial use in compliance with the terms and conditions of this right, as determined by the State Water Board. (Wat. Code, § 1610.)
(0000006)
- F. Right holder shall maintain records of the amount of water diverted and used under this right to enable the State Water Board to determine the amount of water that has been applied to beneficial use.
(0000015)
- G. Right holder shall promptly submit any reports, data, or other information that may reasonably be required by the State Water Board, including but not limited to documentation of water diversion and use under this right and documentation of compliance with the terms and conditions of this right.
(0000010)
- H. No water shall be diverted under this right unless right holder is operating in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Said compliance plan shall specify how right holder will comply with the terms and conditions of this right. Right holder shall comply with all reporting requirements in accordance with the schedule contained in the compliance plan.
(0000070)
- I. Right holder shall grant, or secure authorization through right holder's right of access to property owned by another party, the staff of the State Water Board, and any other authorized representatives of the State Water Board the following:
 - 1. Entry upon property where water is being diverted, stored or used under a right issued by the State Water Board or where monitoring, samples and/or records must be collected under the conditions of this right;

2. Access to copy any records at reasonable times that are kept under the terms and conditions of a right or other order issued by State Water Board;
3. Access to inspect at reasonable times any project covered by a right issued by the State Water Board, equipment (including monitoring and control equipment), practices, or operations regulated by or required under this right; and,
4. Access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with a right or other order issued by State Water Board, or as otherwise authorized by the Water Code.

(0000011)

- J. This right shall not be construed as conferring right of access to any lands or facilities not owned by right holder.

(0000022)

- K. All rights are issued subject to available flows. Inasmuch as the source contains treated wastewater, imported water from another stream system, or return flow from other projects, there is no guarantee that such supply will continue.

(0000025)

- L. This right does not authorize diversion of water dedicated by other right holders under a senior right for purposes of preserving or enhancing wetlands, habitat, fish and wildlife resources, or recreation in, or on, the water. (Wat. Code, § 1707.) The Division of Water Rights maintains information about these dedications. It is right holders' responsibility to be aware of any dedications that may preclude diversion under this right.

(0000212)

- M. No water shall be diverted or used under this right, and no construction related to such diversion shall commence, unless right holder has obtained and is in compliance with all necessary permits or other approvals required by other agencies. If an amended right is issued, no new facilities shall be utilized, nor shall the amount of water diverted or used increase beyond the maximum amount diverted or used during the previously authorized development schedule, unless right holder has obtained and is in compliance with all necessary requirements, including but not limited to the permits and approvals listed in this term.

Within 90 days of the issuance of this right or any subsequent amendment, right holder shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, right holder shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Wildlife (Fish & G. Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat. Code, § 6002); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344); and (5) local grading permits.

Right holder shall, within 30 days of issuance of any permits, approvals or waivers, transmit copies to the Division of Water Rights.

(0000203)

- N. Urban water suppliers must comply with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.). An "urban water supplier" means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually.

Agricultural water users and suppliers must comply with the Agricultural Water Management Planning Act (Act) (Water Code, § 10800 et seq.). Agricultural water users applying for a permit from the State Water Board are required to develop and implement water conservation plans in accordance with the Act. An "agricultural water supplier" means a supplier, either publicly or privately owned, supplying more than 50,000 acre-feet of water annually for agricultural purposes. An agricultural water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells for ultimate resale to customers.

(0000029D)

- O. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this right, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this right with a view to eliminating waste of water and to meeting the reasonable water requirements of right holder without unreasonable draft on the source. Right holder may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this right and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by right holder in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution, article X, section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- P. The quantity of water diverted under this right is subject to modification by the State Water Board if, after notice to right holder and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- Q. This right does not authorize any act which results in the taking of a candidate, threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). If a "take" will result from any act authorized under this right, right holder shall

Application 32212
Page 7 of 8

Permit 21342

obtain any required authorization for an incidental take prior to construction or operation of the project.
Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act
for the project authorized under this right.

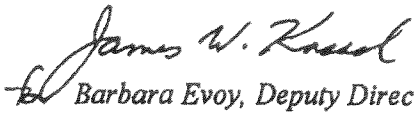
(0000014)

This right is issued and right holder takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer .

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD


Barbara Evoy, Deputy Director
Division of Water Rights

Dated: MAR 07 2014



OWNER LAUREN BON

SOURCE LOS ANGELES RIVER

POINT OF DIVERSION

WITHIN SW 1/4 OF NE 1/4 OF

SECTION PROJECTED SECTION 22, T1S, R13W, SB

COUNTY OF LOS ANGELES

U.S.G.S. QUAD: LOS ANGELES DATE: PH. RE. 1981 SCALE: 1:24,000

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

APPLICATION NO. A032212

PERMIT NO. 21342

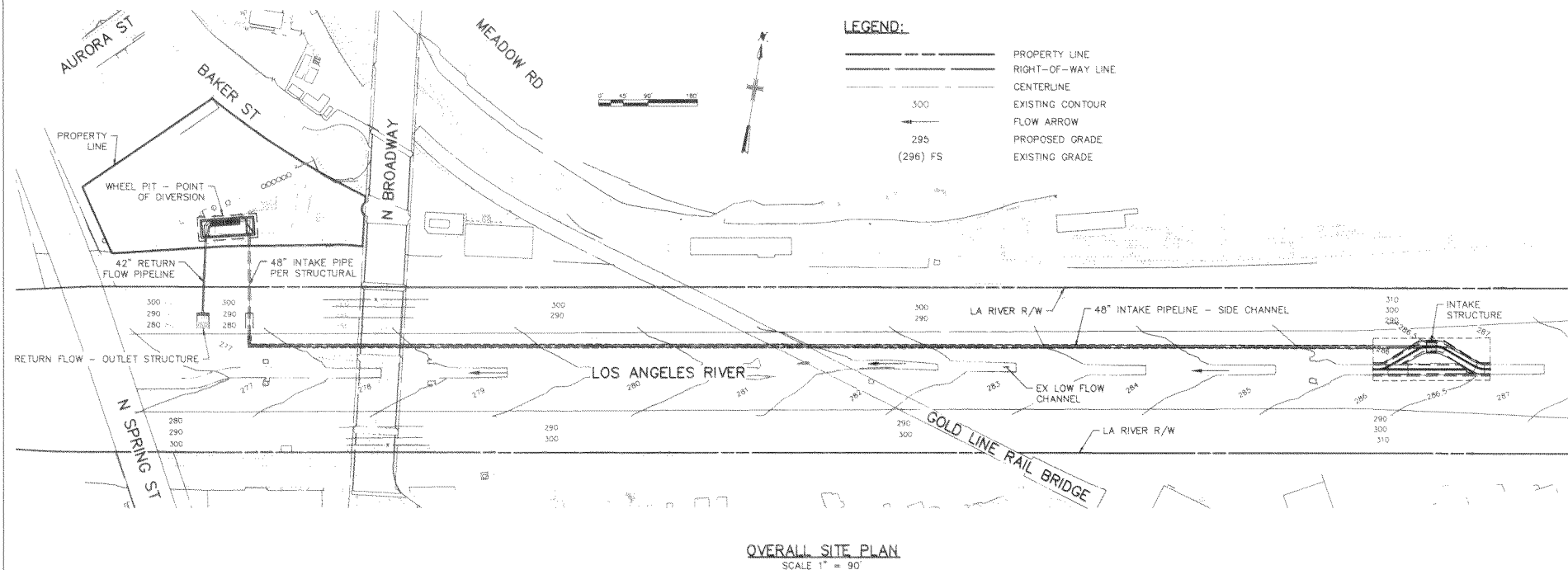
DATE: 2-5-14

DRAWN: MSM

MJM

Note: This map does not constitute a public land survey as defined by California Business & Professions Code section 8726. It has been prepared for descriptive purposes only.

EXHIBIT B
Site Map



						DESIGNED BY		METABOLIC STUDIO		Geosyntec consultants		BENDING THE RIVER BACK INTO THE CITY		JOB NO.	LA0450
						DRAWN BY						DRAWING NO.		EN40	
						CHECKED BY						SCALE		1" = 90'	
						APPROVED BY						OVERALL SITE PLAN MAP & CIVIL SPECIFICATIONS		SHEET NO.	1 OF
REV	DATE	BY	CHK	APP	DESCRIPTION	DATE									
						SEP. 2018									

EXHIBIT C

Scope of Services

Exhibit C

Scope of Services – June 2019

Low Flow Diversion and Auxiliary Structures

Bending the River Back into the City

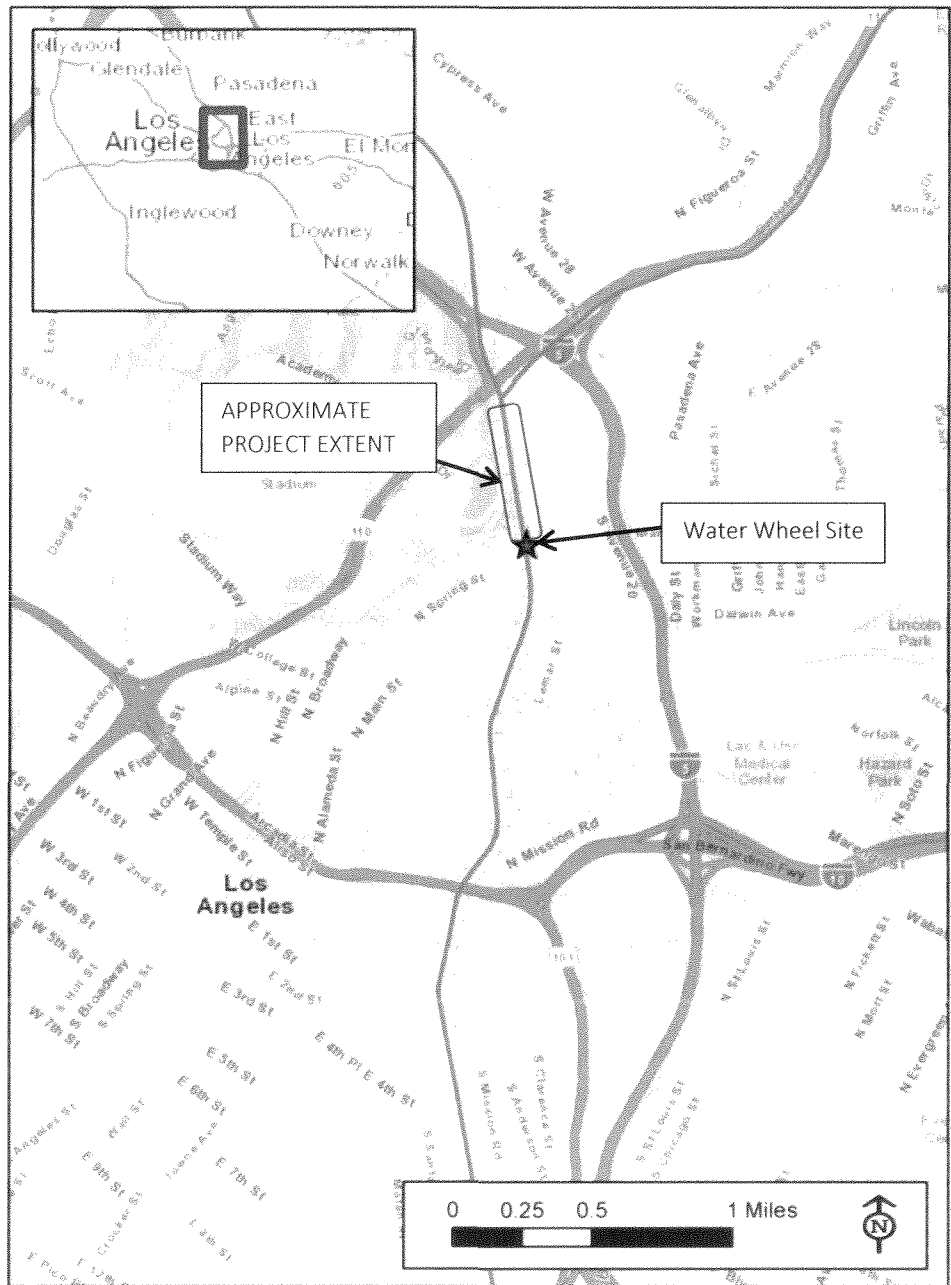
Metabolic Studio will install a low flow diversion and other appurtenances as described below. This document details the anticipated scope of work for inspection, operation, and maintenance activities.

SYSTEM COMPONENTS

The low flow diversion and auxiliary structures consist of the following:

- In-River Appurtenances (approximate river stations)
 - Discharge structure: gate, trash rack, weep holes
 - Discharge pipe
 - Diversion pipe
 - Diversion pipe access manhole
 - Low flow diversion structure: screen, water collection trench, diversion channel
- Treated water line
- Sediment removal

SYSTEM LOCATION



WORK DESCRIPTION

The low flow diversion and auxiliary structures as defined above will be maintained to provide maximum performance and provide preventative maintenance by conducting necessary facility upkeep. Worked to be accomplished consist of maintenance, inspection, and repair. Operation and

maintenance activities will include periodic sediment removal from within the diversion and discharge structures.

OPERATIONS

Low Flow Diversion Operations

No personnel are required to operate the Project during non-storm low flow conditions. During normal operations, non-storm low flows approximately between 60 and 120 CFS will be diverted to the newly constructed low flow channel. The diversion trench is located approximately 2,200 feet upstream of the water wheel. The wedge-wire screen allows 30 CFS to enter the subgrade diversion pipe while flows greater than 30 CFS will bypass the inlet structure and continue flowing into the existing low flow channel of the Los Angeles River. The 30 CFS is required to power the water wheel, however only 0.22 CFS will be diverted for treatment, storage, and distributed for use, while the remaining 29.78 CFS will be immediately returned to the Los Angeles River through the discharge structure.

Storm forecasts will be monitored by LASAN. Closure of the valves at the wheel pit will be triggered by a storm forecast of 70% chance of more than 0.2 inches within a 24-hour period in any area tributary to the LA River upstream of the Project. During wet weather conditions, the valves will prevent the flow of water in the intake pipe and discharge pipe and the water wheel will not be operated.

System Dewatering

Two general situations exist where the system will need to be dewatered:

- Operational considerations during wet weather conditions include isolating the system from the LA River channel. Flow through the intake and discharge pipes will be shut off by closing valves / gates for both pipes.
- Maintenance considerations during non-wet weather conditions include manually diverting low flows away from the diversion structure. Low flows in the LA River channel will be diverted back towards the centerline of the channel by placing sandbags and/or gravel bags and plastic sheeting at the inlet to the low flow diversion channel. If necessary for maintenance, the access manhole can be used to further dewater remaining water within the diversion pipeline through use of portable sump pumps.

Maintenance and Inspections

LASAN will perform operation and maintenance activities in accordance with the description and activity schedule outlined in the table below.

Operation and Maintenance Activity Table

Frequency ¹	Activity	Features	Description
Initial: Weekly for six months. After evaluation period: Monthly	Visual Inspection and Cleaning	Inlet Trash Rack	Inlet trash rack should be inspected for debris and cleaned. Frequency to be confirmed based on initial site visits establishing debris conditions.
Post-Storm ²	Visual Inspection and Cleaning	Inlet Trash Rack, Discharge Trash Rack, Discharge Gate	All in-river features should be visually inspected, cleaned, and cleared of debris.
Quarterly	Visual Inspection	Treated Water Line	Treated water pipeline on Spring Street Bridge and crossing under Baker Street should be visually inspected quarterly for leaks and any other impairments and should be repaired on an as-needed basis.
Annual	Visual Inspection	Low Flow Diversion Channel, Diversion Structure Screens and Discharge Trash Racks	Diversion channel, structure screens and discharge structure trash rack should be inspected annually upon system dewatering. The inspection should look for any compacted debris which has not been removed by normal rakings. Signs of bar movement resulting in entrainment of debris larger than the bar spacing as well as any structural deficiencies should be identified and remedied.
	Sediment removal ³	Water Collection Trench	Clean out sediment from water collection trench at the inlet structure. Depending on river conditions, a Sediment Management Plan may be required. Conversely, it may be found that entrainment and accumulation rates are negligible.
	Visual Inspection	Intake Pipe, Discharge Pipe, and Diversion Pipe	Intake, discharge, and diversion pipes should be visually inspected once every year during system dewatering for trash and sediment build-up, leaks, and any other impairments and should be repaired on an as-needed basis in order to maintain proper water pressure.
5-year frequency	Visual Inspection and Cleaning	Diversion Pipe, Discharge Pipe	Visually inspect the entire length of both the diversion and discharge pipes by a licensed Professional Engineer. Signs of structural deficiencies should be noted and repaired as needed. Any debris or sediment should be cleaned out of the pipes.

EXHIBIT D
Insurance Requirements and Limits

CITY OF LOS ANGELES

INSTRUCTIONS AND INFORMATION
ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker)

1. **Agreement/Reference** All evidence of insurance must identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.

2. **When to submit** Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

3. **Acceptable Evidence and Approval** Electronic submission is the preferred method of submitting your documents. **Track4LA®** is the CITY's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. Track4LA® advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **Track4LA®** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Insurance industry certificates other than the ACORD 25 may be accepted, however, ***submissions other than through Track4LA® will significantly delay the insurance approval process as documents will have to be manually processed.*** All Certificates must provide a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Completed **Insurance Industry Certificates other than ACORD 25 Certificates** are sent electronically to CAO.insurance.bonds@lacity.org.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Verification of approved insurance and bonds may be obtained by checking **Track4LA®**, the CITY's online insurance compliance system, at <http://track4la.lacity.org>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate or edit the existing Acord 25 Certificate through **Track4LA®** at <http://track4la.lacity.org>.

5. **Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the Applicant's Declaration of Self Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the Office of the City Administrative Officer, Risk Management for consideration.

6. **General Liability** insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. **Sexual Misconduct** coverage is a required coverage when the work performed involves minors. **Fire Legal Liability** is required for persons occupying a portion of CITY premises. Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.

7. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

8. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

9. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self-Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). **A Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

10. **Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. **Builder's Risk/Course of Construction** is required during construction projects and should include building materials in transit and stored at the project site.

11. **Surety** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A **Crime Policy** may be required to handle CITY funds or securities, and under certain other conditions. **Specialty coverages** may be needed for certain operations. For assistance in obtaining the CITY required bid, performance and payment surety bonds, please see the City of Los Angeles Bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information.

Required Insurance and Minimum Limits

Name: Metabolic StudiosDate: 5/23/2017Agreement/Reference: Operation and Maintenance of the Los Angeles River Rubber Dam and Appurtenances Structures

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

☒ **Workers' Compensation (WC) and Employer's Liability (EL)**

WC StatutoryEL 1,000,000☒ Waiver of Subrogation in favor of City☐ Longshore & Harbor Workers☐ Jones Act

☒ **General Liability** Policy must name the City of Los Angeles and LA Sanitation as an additional insured

5,000,000☒ Products/Completed Operations☐ Sexual Misconduct _____☐ Fire Legal Liability _____☐ _____

Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)

☒ **Professional Liability** (Errors and Omissions)

1,000,000

Discovery Period _____

Property Insurance (to cover replacement cost of building - as determined by insurance company)

☐ All Risk Coverage☐ Boiler and Machinery☐ Flood _____☐ Builder's Risk☐ Earthquake _____☐ _____☐ _____

Surety Bonds - Performance and Payment (Labor and Materials) Bonds

Crime Insurance

Other: Provided to Salyna Cun, CAO



Jessica Quach <jessica.quach@lacity.org>

Waterwheel MOA with Metabolic Studio

Kosta Kaporis <kosta.kaporis@lacity.org>
To: Jessica Quach <jessica.quach@lacity.org>
Cc: Wing Tam <wing.tam@lacity.org>

Mon, Feb 10, 2020 at 9:45 AM

Hi Jessica,

This Agreement is just a replacement agreement that was done a couple of years ago and it just makes LASAN to be the O&M contractor for Metabolic Studios. Here are the answers to your questions:

1. Is RAP aware that the land adjacent to the water wheel's location will receive water from the LA River? Will their Board have to approve that?

Yes, RAP staff are aware of this effort. However any future use of the diverted water to their parks is outside the scope of this agreement.

2. Given the location of the project, graffiti and other types of vandalism might happen. Whose responsibility is it to handle that? Will Metabolic pay for graffiti abatement or the cost of vandalism to the rubber dam, pipeline/appurtenances?

Activities such as removing graffiti at the intake structure can be considered maintenance and repair items and thus it can be under LASAN's scope of work. Metabolic Studio would need to pay LASAN to make the repairs. This agreement is necessitated in part by the fact that there is no rubber dam as part of the project anymore.

3. 50 years is a long time and this contract is technically for 100 years. What happens if, during that time, Metabolic no longer exists or sells the property? What happens to the water wheel/pipeline/inlet/outlet structures? The termination clause absolves BOS from performing O&M, but in case something happens, will Metabolic dismantle the wheel?

Since LASAN is just the O&M contractor, we would not be responsible for any of these facilities if abandoned. The City does not have jurisdiction over the River and thus Metabolic Studio will have to deal with U.S. Army Corps of Engineers or Los Angeles County Flood Control District.

4. Do you have a profile view of the project? The attachments have a site plan and plan view, but it's difficult to visualize what this project will look like.

This artistic rendering as appeared in LA Times a couple of years ago helps to visualize the watersheel better. Please note that there will be no rubber dam but rather an incepting channel along the River.

Feel free to call me or Wing if there are any questions.

[Quoted text hidden]

A vision for the L.A. River

Artistic rendering of the proposed water wheel project, showing the water wheel structure and the surrounding area, including the river and the city skyline.



LA Times Rendering.jpg
1696K

A vision for the L.A. River

Artist Lauren Bon is proposing a 70-foot water wheel that would divert water from the Los Angeles River to create a stream and a shady, landscaped retreat for the public, as well as an irrigation system for area parks.

