

0150-12734-0000

**T R A N S M I T T A L**

TO The Council	DATE 8/30/2024	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT All	

**PROPOSED PERSONAL SERVICES CONTRACT BETWEEN THE BUREAU OF SANITATION (BOS) AND GATEKEEPER SYSTEMS, FOR SOFTWARE MAINTENANCE OF BOS' FIELD AUTOMATION FOR SANITATION TRUCKS APPLICATION AND RELATED NAVIGATE PRODUCTS AND INTEGRATIONS**

Transmitted for your consideration.  
See the City Administrative Officer report attached.



MAYOR

(Carolyn Webb de Macias for)

MWS/PJH/BC/JVW:jq/amm:10250013

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

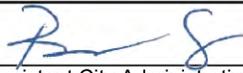
To: The Mayor	Date: 08-09-24	C.D. No. All	CAO File No.: 0150-12734-0000				
Contracting Department/Bureau: Public Works: Bureau of Sanitation		Contact: Dan Seto – (323) 342-6288 Nancy Lantin – (213) 485-2158					
Reference: Transmittal from the Board of Public Works dated June 6, 2024 updating Bureau of Sanitation and Bureau of Contract Administration Joint Board Report (BPW-2024-0309) dated May 24, 2024							
Purpose of Contract: Software maintenance and enhancement services of Field Automation For Sanitation Trucks (FAST) application and related NaviGate products and integrations							
Type of Contract: (X) New contract ( ) Amendment, Contract No.		Contract Term Dates: Five years from execution, with two three-year renewal options, and month-to-month extension for up to six months for a total potential term of 11 years and six months					
Contract/Amendment Amount: \$2,529,000							
Proposed amount \$0 + Prior award(s) \$0 = Total \$2,529,000							
Source of funds: Sewer Construction and Maintenance Fund							
Name of Contractor: GKS Holdings, Inc., DBA Gatekeeper Systems							
Address: 99 E C Street, Suite 209, Upland, CA 91786							
	Yes	No	N/A	Contractor has complied with:	Yes	No	N/A
1. Council has approved the purpose	X			8. Business Inclusion Program			X
2. Appropriated funds are available	X			9. Equal Benefits & First Source Hiring Ordinances	X		
3. Charter Section 1022 findings completed	X			10. Contractor Responsibility Ordinance			X
4. Proposals have been requested			X	11. Disclosure Ordinances	X		
5. Risk Management review completed	X			12. Bidder Certification CEC Form 50	X		
6. Standard Provisions for City Contracts included	X			13. Prohibited Contributors (Bidders) CEC Form 55	X		
7. Workforce that resides in the City: 14.28%				14. California Iran Contracting Act of 2010	X		

**RECOMMENDATION**

That the City Council authorize the Board of Public Works (Board), or two members of the Board, on behalf of the Bureau of Sanitation, to execute the proposed sole source Personal Services Contract with Gatekeeper Systems, for software maintenance and enhancement services of the Field Automation For Sanitation Trucks (FAST) application and related NaviGate suite of products and integrations for a five-year term, with two three-year renewal options, and an option to extend on a month-to-month basis for six months to be exercised at the City’s sole discretion, for a total potential term of 11 years and six months, with a total maximum not to exceed contract amount of \$2,529,000, and has been previously approved by the Board. The City Attorney approved the contract as to form.

**SUMMARY**

In accordance with Executive Directive No. 3 (Villaraigosa series), the Board of Public Works (Board), on behalf of the Bureau of Sanitation (Bureau), requests approval to execute a new sole source personal services contract (Contract) with Gatekeeper Systems (Gatekeeper) for software maintenance of the Field Automation For Sanitation Trucks (FAST), the Bureau’s work management system

Jessica Quach			
JPQ/AMM	Analyst	10250013	Assistant City Administrative Officer

accessible from the field, and related NaviGate suite of products and integrations. FAST is a web-based application developed using the Vendor's proprietary off-the-shelf modules from the NaviGate Application Framework. The system is also integrated with the Bureau of Engineering's Geographical Information System. Additionally, FAST is integrated with Ellipse, the Bureau's Computerized Maintenance Management System. All components of the FAST system are owned or licensed to the Bureau. Gatekeeper has provided implementation services for the Bureau since it began utilization of FAST in September 2003 and has provided satisfactory service. The total not to exceed contract amount for the Contract with Gatekeeper is \$2,529,000. The proposed contract has a total potential term of 11 years and six months of which the two three-year extension and six month-to-month holdover options are at the sole discretion of the City. First year contract costs are projected to be under \$100,000 and funds are provided within the Bureau's FY 2023-24 Adopted Budget from the Sewer Construction and Maintenance Fund.

The new proposed sole source Contract has been approved by the City Attorney as to form, and will become effective upon execution. The Board adopted the report recommending approval of the contract on May 24, 2024. In accordance with Los Angeles City Charter Section 373 and Los Angeles Administrative Code Section 10.5(a), execution of the Contract requires Council approval as the total term exceeds three years. Our Office reviewed the request and recommend approval.

## **Background**

In September 2003, the Bureau implemented its new FAST system with Gatekeeper (C-97798). FAST is a web-based application developed using the Vendor's proprietary off-the-shelf modules from the NaviGate Application Framework. FAST, a web-based application, is used by more than 300 Bureau employees in the Bureau's Clean Water Conveyance Division (CWCD) and over 180 Bureau vehicles in maintaining upwards of 6,700 miles of the City's wastewater collection systems and 1,200 miles of the stormwater system. This enables field crews to update maintenance data electronically and directly to Ellipse and is critical to generating over 300,000 maintenance work orders annually. FAST allows the Bureau to electronically create work orders through its capturing of sewer and stormwater infrastructure data, maps, and vehicle location. Once a work order is complete, field staff are able to wirelessly transfer sewer and stormwater infrastructure condition, cleaning, and timekeeping data to the asset management system for analysis and planning.

*Contracting History with Gatekeeper* - From 2003 to 2008, software maintenance services were provided through one-time purchase orders. In 2008, the Bureau contracted with Gatekeeper for software maintenance and enhancement services for the FAST system, for a maximum cost of \$1,100,000 (C-113622). In 2011, the Council approved Amendment No. 1 which increased the cost ceiling to \$1,600,000 and extended the term by three years (C.F. 11-0881). In 2014, the Council approved Amendment No. 2 which extended the term by an additional three years through September 2017 (C.F. 14-0576). In 2018, the Council approved Amendment No. 3 which increased the cost ceiling to \$2,120,000 and extended the term by three years to May 31, 2020. The Bureau has procured the necessary services since the contract's expiration utilizing one-time purchase orders. The proposed sole source contract will establish a new working agreement, provide extension options at the City's discretion, and allow the department sufficient time to conduct any necessary successor procurement process to ensure continuity of its work order system.

*Scope of Work* – Under the proposed Contract, the Gatekeeper will provide system maintenance and enhancements for the NaviGate suite of products, including the FAST, related products and

integrations. Gatekeeper will provide the following services, some of which will be on as an-needed basis as directed by the City through the use of Task Orders (TO):

- Software – software maintenance and support services, including but not limited to, software upgrades, defect corrections and technical support,
- Enhancements to the NaviGate Software – Purchase of additional NaviGate modules to incorporate additional business process, software configuration, reports, integrations, tuning, programming, and technical training and documentation,
- Integration support – Configuration, tuning, modifications, programming, and documentation; and,
- Project management duties – Planning, developing schedules, project status reports, and coordinating resources and activities

Failure of Gatekeeper to comply with any provisions of the Contract will result in liquidated damages in accordance with the provisions detailed in Article 9 of the proposed Contract.

*Compensation for Services* – Funding will be provided on a project-by-project basis from the Sewer Construction and Maintenance Fund (SCM). Services excluding annual software maintenance are on an as-needed basis and will only be provided after a written request from the City through the use of a task order. The maximum compensation under the proposed Contract is \$2,529,000 and the estimated average annual obligatory maintenance costs are \$144,000. Table 1 reflects the estimated total costs over the 11 and one half year term, each for annual maintenance, systems enhancement, integration support, and project management and on-site support.

Table 1: Gatekeeper Proposed Contract Total Estimated Costs for Projects, Services and Support	
Item	Estimated Total Cost
Annual Maintenance for 11-year period, including two optional three year renewal periods	\$1,584,000
Systems Enhancement	825,000
Integration Support	100,000
Project Management and On-site Support	20,000
<b>Total</b>	<b>\$2,529,000</b>
Non-discretionary costs consist of Annual Maintenance only \$1,584,000. All other services are on an as-needed basis and charged per task order. Refer to Table 1 in the Attachment for more detail.	

The estimated first year non-discretionary costs for the maintenance component of the contract are under \$100,000 and funds are included within the Bureau’s FY 2023-24 budgeted SCM funds. In accordance with City Standard Provisions for contracting, payment obligation is subject to the availability of budgeted funds.

**CITY COMPLIANCE**

*Sole Source Justification* – As the functioning of FAST and its integrations with Ellipse are critical to the operation of the sewer and stormwater conveyance systems, maintenance of this software is a necessity. Gatekeeper is the software manufacturer and author of the NaviGate Application Framework and is the only company authorized and capable of providing software maintenance and integration support to other applications. Additionally, Gatekeeper does not provide licenses to other firms to perform maintenance services for FAST. Gatekeeper has developed a historical relationship with the

Bureau, and the Vendor's software engineers have specific knowledge and understanding of the Bureau's system installation, data, and functionality. LASAN determined in required a sole source contract with this specific contractor. The City Attorney reviewed the justification provided by LASAN and opined the Bureau could proceed with the sole source as services of the contractor Gatekeeper is needed because the critical software at issue is proprietary and unique to the contractor, who manufactured, customized, and implemented the software based on the City's unique needs and uses.

*Charter Section 1022 and Contract Compliance* – Gatekeeper does not subcontract or license with other firms to perform the proposed work. On July 7, 2021, the Office of Procurement determined that there are no opportunities for subcontracting and waived the Business Inclusion Program requirement for this Contract. On June 6, 2023, and in accordance with Charter Section 1022, the Personnel Department determined that it would be more feasible to contract out the work due to the proprietary nature of the work and the City forces lacking the technical expertise to perform the proposed work. The Bureau of Contract Administration completed its compliance review and is party to the report recommending approval. All other City requirements and standard contract provisions have been adhered to.

The City Attorney has reviewed the proposed Contract as to form. In accordance with Los Angeles City Charter Section 373 and Los Angeles Administrative Code Section 10.5(a), execution of the Contract requires Council approval as the total term exceeds three years. Our Office recommends approval.

## **FISCAL IMPACT STATEMENT**

The execution of the proposed Contract will result in expenditures of up to \$2,529,000 over the potential 11-years and six-month term. There is no impact to the General Fund as funding for the project will be provided from the Sewer Construction and Maintenance Fund (SCM). All as-needed services will be identified on a project-by-project basis and funded by the SCM, subject to availability and inclusion in the annual budget. The non-discretionary annual maintenance will be provided from SCM funds. First year obligatory funding totaling \$100,000 are budgeted in SCM Fund 760/50/50YX82 and sufficient to offset first year contract costs. Future funding is contingent upon Council and Mayor approval of the funding for the contract as part of the annual budget process. The Contract includes an obligation limitation clause which limits the City's obligation to make payments to funds which have been appropriated for the stated purpose.

## **FINANCIAL POLICIES STATEMENT**

The recommendation in this report complies with the City's financial policies in that expenditures of special funds are limited to the mandates of the funding source.

Attachment – Transmittal from Board of Public Works dated June 6, 2024 updating Bureau of Sanitation and Bureau of Contract Administration Joint Board Report (BPW-2024-0309) dated May 24, 2024

**BOARD OF PUBLIC WORKS  
MEMBERS**

**AURA GARCIA**  
PRESIDENT

**M. TERESA VILLEGAS**  
VICE PRESIDENT

**DR. MICHAEL R. DAVIS**  
PRESIDENT PRO TEMPORE

**VAHID KHORSAND**  
COMMISSIONER

**SUSANA REYES**  
COMMISSIONER

# CITY OF LOS ANGELES

CALIFORNIA



**KAREN BASS**  
MAYOR

**OFFICE OF THE  
BOARD OF PUBLIC WORKS**

**TJ KNIGHT**  
ACTING EXECUTIVE OFFICER

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

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

<http://bpw.lacity.org>

June 6, 2024,

**BPW-2024-0309**

The Honorable Mayor Bass  
City Hall – Room 320  
Los Angeles, CA 90012  
Attn: Heleen Ramirez

**PERSONAL SERVICES CONTRACT – GATEKEEPER SYSTEMS FOR SOFTWARE  
MAINTENANCE AND ENHANCEMENT SERVICES TO FIELD AUTOMATION**

As recommended in the accompanying report from the Directors of the Bureau of Sanitation and Contract Administration, which this Board has adopted, the Board of Public Works (Board) recommends that the Mayor and City Council:

1. AUTHORIZE to execute a sole-source personal services contract with Gatekeeper Systems for software maintenance and enhancement services to the NaviGate suite of products and its interfaces used by Bureau of Sanitation (BOS). The term of the contract is for five years with two renewal options of three years to be exercised at \*BOS's sole discretion, with a cost not to exceed \$2,529,000 including LASAN exercising the two renewal options for a total term of the contract for eleven years; and
2. AUTHORIZE the President or two members of the Board will execute the contract.

Fiscal Impact: There is no impact to the General Fund.

Sincerely,

TJ KNIGHT,  
Acting Executive Officer, Board of Public Works

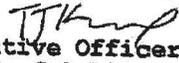
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**\*AMENDED TO STRIKE OUT BOS's sole discretion in recommendation #1  
Amend extension and must come back to Board**

BPW-2024-0309  
AS AMENDED\*\*

DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION  
BUREAU OF CONTRACT ADMINISTRATION  
JOINT BOARD REPORT NO. 1  
MAY 24, 2024

ADOPTED BY THE BOARD  
PUBLIC WORKS OF THE CITY  
of Los Angeles California  
AND REFERRED TO THE CITY COUNCIL  
MAY 24 2024  
AND REFERRED TO THE MAYOR  
  
Executive Officer  
Board of Public Works

CD: ALL

AUTHORITY TO AWARD AND EXECUTE A SOLE-SOURCE PERSONAL SERVICES CONTRACT WITH GATEKEEPER SYSTEMS FOR SOFTWARE MAINTENANCE AND ENHANCEMENT SERVICES TO FIELD AUTOMATION FOR SANITATION TRUCKS APPLICATION AND RELATED NAVIGATE PRODUCTS AND INTEGRATIONS (W.O. #S10IGSSO AND W.O. #S11IGSSC)

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### RECOMMENDATIONS

1. Approve and forward this report with transmittals to the Mayor and City Council (Council) with the request that the Board of Public Works (Board) be authorized to execute a sole-source personal services contract with Gatekeeper Systems for software maintenance and enhancement services to the NaviGate suite of products and its interfaces used by LA Sanitation and Environment (LASAN). The term of the contract is for five (5) years with two (2) renewal options of three (3) years to be exercised at ~~LASAN's sole discretion~~, with a cost not to exceed \$2,529,000 including LASAN exercising the two (2) renewal options for a total term of the contract for eleven (11) years.
2. Upon the Mayor's and Council's authorization, the President or two (2) members of the Board will execute the contract.

### TRANSMITTALS

1. Copy of the proposed Personal Services Contract between the City of Los Angeles and Gatekeeper Systems.
2. Copy of the Business Inclusion Program waiver issued by the Mayor's Office of Budget & Innovation on July 7, 2021.

### DISCUSSION

#### **Background**

Field Automation for Sanitation Trucks (FAST) was implemented in September 2003 to provide LASAN's North and South Conveyance Systems Divisions (CSDs) with a paperless work management system accessible from the field. FAST is a web-based application which uses the off-the-shelf modules from the suite of proprietary products called NaviGate by Gatekeeper Systems. FAST is integrated with LASAN's asset management system. This integration allows the use of robust features such as maintenance scheduling to generate hundreds of thousands of work orders each year. FAST enables deploying those work orders electronically and capturing valuable condition, cleaning, and timekeeping information from the field crews back to the asset management system for analysis, reporting, and planning.

**Sole-Source Contract**

NaviGate software modules are proprietary products of Gatekeeper Systems, and maintenance and enhancements of these products is also proprietary and available solely through Gatekeeper Systems. The NaviGate application is designed so that the modules work together seamlessly and additional modules can be implemented as needed to support additional or new business requirements.

This sole-source contract will be used to provide software maintenance, consulting expertise, enhancements, and support services for the NaviGate products and its interfaces. Failure to keep this application operating properly would severely impact LASAN's North and South Conveyance Systems Divisions, who rely on FAST to perform their daily field operations. Enhancements to the FAST application will further improve productivity, increase response to customer service calls, and allow us to take advantage of the capabilities of this state-of-the-art technology.

**Project Scope**

The Project scope will cover services of Gatekeeper Systems to provide system maintenance and enhancements for the NaviGate suite of products. The services will include, but not be limited to the following:

- Software maintenance and support services, including, but not limited to:
  - Software upgrades
  - Defect corrections
  - Technical support
  
- Enhancements to the NaviGate Software, including, but not limited to:
  - Purchase of additional NaviGate modules to incorporate additional business process
  - Software configuration
  - Reports
  - Integrations
  - Tuning
  - Programming
  - Technical Training and documentation.
  
- Integration support, including, but not limited to:
  - Configuration
  - Tuning
  - Modifications
  - Programming
  - Documentation

- Project management duties, including, but not limited to:
  - Planning
  - Developing schedules
  - Project status reports
  - Coordinating resources and activities.

### **BUSINESS INCLUSION PROGRAM (BIP)**

On January 12, 2011, the Mayor issued Executive Directive No. 14, which created the BIP. This program provides Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), Small Business Enterprise (SBE), Emerging Business Enterprise (EBE), Disabled Veteran Business Enterprise (DVBE), and Other Business Enterprise (OBE) firms an equal opportunity to compete for, and participate in, City contracts. However, since Gatekeeper Systems does not subcontract to or otherwise license any firm to perform maintenance services for NaviGate proprietary software, this project provides no opportunities for subcontractor participation. As such, a BIP Outreach waiver was obtained from the Mayor's Office of Budget & Innovation, Chief Procurement Officer Team on July 7, 2021 (Transmittal No. 2).

### **LOCAL BUSINESS PREFERENCE (LBP) PROGRAM**

Los Angeles Administrative Code Division 10, Chapter 1, Article 4, Section 10.25 adopted the Local Business Preference (LBP) Program, which was designed to increase local employment and expenditures in the local private sector. At the time of project advertisement, businesses that qualified as a Local Business Enterprise (LBE) may be granted an eight percent reduction of their Bid amount solely for Bid evaluation purposes. If the LBE is also a Local Small Business (LSB) and/or Local Transitional Employer (LTE), they may be granted an additional two percent reduction for each of those certifications, up to a total of twelve percent. Businesses that qualify as a LBE, but neither as a LSB and/or a LTE, may be granted a one percent reduction, up to a maximum of two percent for each of those certifications, for every ten percent of their bid that is to be performed by a LSB and/or a LTE subcontractor. Additionally, all non-LBE Businesses may be granted a one percent reduction, up to a maximum of five percent, of their Bid amount solely for Bid evaluation purposes, for every ten percent of their bid that is to be performed by a LBE, LSB, and/or a LTE subcontractor. However, as this is a sole source contract, the LBP Program does not apply.

(Continued on next page)

**Community-Level Contracting (CLC)**

As part of the City’s CLC initiative led by the Department of Public Works (DPW) as per the CLC Board Motion issued on May 19, 2021, LASAN seeks to help make City contracting more accessible and equitable by providing small contractors the opportunity to work directly with the City as Prime contractors on smaller, more manageable projects. LASAN staff evaluated the work to be performed under this opportunity and determined the project is not a candidate for CLC due to the sole-source/proprietary nature of the work.

**Cost**

The estimated cost of the software maintenance services provided under this contract is not to exceed \$2,529,000, covering five (5) years and two (2) renewal options of three (3) years for a total contract term of eleven (11) years. Discretionary funds in the amount of \$945,000 are being requested for emergency fixes and potential changes to the FAST/LASAN’s Asset Management System integration software due to anticipated LASAN’s Asset Management System upgrades. The total cost of this contract is estimated to be \$2,529,000, covering the five (5) years and two (2) renewal options of three (3) years for a total contract term of eleven (11) years covered by this agreement. The breakdown of the cost estimate is illustrated as follows.

**Table 1**

<b>ITEM</b>	<b>ESTIMATED COST</b>
Maintenance for eleven (11)-year period including two (2) optional three (3)-year renewal periods	\$1,584,000
Systems enhancement, including, but not limited to the following: <i>Field Inspection Module</i> <i>Illicit Discharge Investigation Module</i> <i>Redlining Module</i> <i>Pumping Plant Maintenance</i> <i>De-couple FAST and EMPAC</i>	\$825,000
Integration Support	\$100,000
Project Management and on-site support	\$20,000
<b>TOTAL</b>	<b>\$2,529,000</b>

**Charter Section 1022**

The CAO issued the 1022 determination report on June 6, 2023 and determined that there was an insufficient number of City staff to perform the work proposed to be contracted.

**Approved as to Form**

The proposed contract has been approved as to form by the Office of the City Attorney.

BUREAU OF SANITATION  
BUREAU OF CONTRACT ADMINISTRATION  
JOINT BOARD REPORT NO. 1  
MAY 24, 2024

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**Other City Policies and Requirements**

Gatekeeper Systems shall comply with all City requirements including

- Non-Discrimination/Equal Employment Practices/Affirmative Action
- Living Wage and Worker Retention Ordinances
- Equal Benefits Ordinance
- Business Tax Registration Certificate
- Child Support Obligations Ordinance
- Insurance and Performance Bond Requirements
- Slavery Disclosure and Disclosure of Border Wall Contracting Ordinances
- Americans with Disabilities Act
- Municipal Lobbying Ordinance
- Los Angeles Residence Information
- City of Los Angeles Contract History
- Non-Collusion Affidavit
- First Source Hiring Ordinance
- Contractor Bidder Campaign Contribution and Fundraising Restrictions
- Iran Contracting Act of 2010
- City Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance
- COVID-19 Requirements
- Contractor Data Reporting

**CONTRACTOR RESPONSIBILITY ORDINANCE**

This contract with Gatekeeper is exempt from compliance with the requirements specified in the City of Los Angeles's Contractor Responsibility Ordinance #173677, [Article 14, Chapter 1, Division 10, L.A.C.C.], per Sec.10.40.4, Exemptions, (b) (6) Contracts where the goods or services are proprietary or only available from a single source.

**CONTRACTOR PERFORMANCE EVALUATION**

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

**Headquarters Address and Workforce Information**

The headquarters of Gatekeeper Systems is 99 E C Street, Suite 209, Upland, CA. Gatekeeper Systems employs 7 people, of which 1 resides in the City of Los Angeles.

**Contract Administration**

Responsibility for the administration of this contract will be with the Information and Control Systems Division of LASAN.

BUREAU OF SANITATION  
BUREAU OF CONTRACT ADMINISTRATION  
JOINT BOARD REPORT NO. 1  
MAY 24, 2024

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PROJECT REVIEW BY DIRECTOR (PRD) APPROVAL

This contract was approved by PRD on June 15, 2022, in the amount of \$2,529,000.

STATUS OF FINANCING

There is no impact to the General Fund. The total funding for this project is not to exceed \$2,529,000. Funding in the amount of \$100,000 is available in Budget Fiscal Year 2023-24, Fund No. 760, Sewer Operations & Maintenance Fund, Department No. 50, Appropriation Account No. 50YX82, PW-Sanitation Expense and Equipment. The remaining funding will be budgeted within the Fund No. 760, Sewer Operations & Maintenance Fund.

Funds and appropriations for future fiscal years are not yet identified and existing appropriations may change based on available cash balances. Therefore, funds and appropriations will be determined by the Director and General Manager of LASAN.

Funding as of the date of this Board Report has been verified and approved by the Director of the Office of Accounting subject to terms and conditions and cash availability described above.

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

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

FUTURE ACTIONS

Upon authorization by the Council and the Mayor, the Board will execute the contract with Gatekeeper.

(Signature page follows)

BUREAU OF SANITATION  
BUREAU OF CONTRACT ADMINISTRATION  
JOINT BOARD REPORT NO. 1  
MAY 24, 2024

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Respectfully submitted,



---

BARBARA ROMERO  
Director and General Manager  
Bureau of Sanitation

COMPLIANCE REVIEW PERFORMED  
AND APPROVED BY:



Lynda McGlinchey (May 9, 2024 15:46 PDT)

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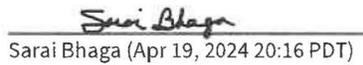
LYNDA McGLINCHEY, Program Manager II  
Office of Contract Compliance  
Bureau of Contract Administration



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JOHN L. REAMER, JR.  
Inspector of Public Works  
Bureau of Contract Administration

REVIEWED AND APPROVED BY:



Sarai Bhaga (Apr 19, 2024 20:16 PDT)

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SARAI BHAGA, Chief Financial Officer  
Bureau of Sanitation  
Date: \_\_\_\_\_

APPROVED AS TO FUNDS:



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MIGUEL DE LA PEÑA, Director  
Office of Accounting  
760/50/50YX82 \$100,000  
Date: 5/10/2024

Prepared by:  
Dan Seto, ICSD  
(323) 342-6288

CONTRACT NO. C- \_\_\_\_\_

SERVICE AGREEMENT  
BETWEEN  
THE CITY OF LOS ANGELES  
AND  
GATEKEEPER SYSTEMS  
FOR  
SOFTWARE MAINTENANCE AND ENHANCEMENT SERVICES OF  
FIELD AUTOMATION FOR SANITATION TRUCKS (FAST) APPLICATION  
AND RELATED  
NAVIGATE PRODUCTS AND INTEGRATIONS

**City of Los Angeles**

**Department of Public Works**

**Los Angeles Sanitation and Environment**

**Barbara Romero, Director and General Manager**

**Mas Dojiri, Assistant Director**

**Information and Control Systems Division**

**Nicolas Tran, Manager**

11/22/2023

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## **AGREEMENT**

This AGREEMENT, made and entered into by and between the City of Los Angeles, a municipal corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and GKS Holdings, Inc., doing business as "Gatekeeper Systems," which is hereinafter also referred to as the "CONTRACTOR"; is set forth as follows:

## **WITNESSETH**

WHEREAS, the CITY currently uses the NaviGate Application Framework, a proprietary software from CONTRACTOR, for the Field Automation for Sanitation Trucks (FAST) application which provides maintenance work orders and facilities data to the CITY's Department of Public Works – Bureau of Sanitation (LASAN) Clean Water North/South Conveyance Division field crews using wireless, mobile technology; and

WHEREAS, CONTRACTOR possesses the unique understanding and expertise of the FAST application and its software interfaces, having implemented and started up the application and interfaces with LASAN in 2003; and

WHEREAS, LASAN has been continuously using the FAST application since 2003; and

WHEREAS, CONTRACTOR has provided software services for custom enhancements and software updates based on LASAN's unique requirements for FAST and its software interfaces since 2003; and

WHEREAS, CONTRACTOR, being the sole manufacturer and exclusive licensor of the NaviGate Application Framework, is uniquely qualified and the only firm legally able and authorized to provide software updates for the NaviGate Application Framework, as no other person or entity possesses the legal right to provide such updates; and

WHEREAS, failure to provide such updates would jeopardize the proper operation of the NaviGate application, and with potentially severe negative impacts to LASAN and its operations; and

WHEREAS, LASAN uses the FAST application interfaced to LASAN's ELLIPSE application to manage the maintenance and operation of the CITY's Sewer and Stormwater Conveyance Systems through the generation of over 300,000 work orders per year; and

WHEREAS ABB Enterprise Software, the developer of ELLIPSE software, together with Gatekeeper Systems, built the integration between ELLIPSE and FAST; and

WHEREAS FAST's integration to ELLIPSE enables LASAN to leverage its investment by using all the built-in functionality of an enterprise maintenance management system, and maintain all asset history in the same database; and

WHEREAS, LASAN relies on the Sewer and Storm Drain infrastructure data maintained in Bureau of Engineering's (BOE's) Geographical Information System (GIS); and

WHEREAS, FAST provides a customized direct interface to the work orders and asset information maintained in ELLIPSE as well as the BOE GIS system and provides this updated information to LASAN's field crew for the maintenance and operation of the CITY's Sewer and Stormwater Conveyance System.

WHEREAS, maintenance and operation of LASAN's Sewer and Stormwater Conveyance System is essential for public safety in preventing sewer overflows/spill and flooding which may cause property damage and may incur significant fines from the California State Water Resources Control Board or the Los Angeles Regional Water Quality Control Board; and

WHEREAS, LASAN does not have the in-house expertise to perform many of the services required to maintain, support, and enhance the proprietary software and must rely on outside services for the reasons explained above; and

WHEREAS, LASAN recognizes that CONTRACTOR possesses specialized and proprietary expertise, knowledge, and sufficient personnel to perform the required services; and

WHEREAS, LASAN requires resources and services only available from CONTRACTOR to satisfy the support needs of the NaviGate suite of products and its interfaces; and

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

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the terms and conditions of this AGREEMENT, it is understood and agreed by and between the parties hereto as follows:

**ARTICLE 1 – CONSTRUCTION OF PROVISIONS AND TITLES HEREIN**

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against CITY or CONTRACTOR. The word "CONTRACTOR" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one CONTRACTOR, unless expressly stated otherwise, their obligations and liabilities shall

be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

## **ARTICLE 2 – DEFINITIONS**

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

AGREEMENT/CONTRACT	This contractual agreement between the CITY and Gatekeeper Systems for CONTRACTOR SERVICES
BOARD	The Board of Public Works of the City of Los Angeles.
BOE	Bureau of Engineering, Department of Public Works, City of Los Angeles
CITY	The City of Los Angeles, Board of Public Works or its subordinate Bureaus. Depending on the context in which it is used, the term City may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles who is

authorized to represent the City of Los Angeles in  
manners concerning this document.

CITY PROJECT MANAGER or PROJECT MANAGER	CITY'S designated representative for all issues related to this AGREEMENT
CONTRACTOR	Gatekeeper Systems
CONTRACTOR SERVICES	All services to be provided by the CONTRACTOR specified in this AGREEMENT
CWNCD	LASAN's Clean Water North Conveyance Division
CWSCD	LASAN's Clean Water South Conveyance Division
DIRECTOR	Director of LASAN or his/her designated representative
FAST	Field Automation for Sanitation Trucks
GIS	Geographical Information System
GPS	Global Positioning System
LASAN	Bureau of Sanitation, Department of Public Works, City of Los Angeles
LICENSED PROGRAM	An off-the-shelf computer program or program module that is licensed to the CITY by CONTRACTOR.
MBE/WBE/SBE/EBE/DVBE/ OBE	Minority/Women/Small/Emerging/Disabled Veteran/Other Business Enterprises
PROJECT	The system, process, or capability to be designed, developed or implemented by the CONTRACTOR.

### **ARTICLE 3 – PROJECT DESCRIPTION**

Field Automation for Sanitation Trucks (FAST) delivers wireless, mobile work order assignments, facility data, maps, and vehicle location for the Clean Water North Conveyance Division (CWNCD) and Clean Water South Conveyance Division (CWSCD) of LASAN. The system is critical for the operation for CWNCD and CWSCD. FAST has been in production since September 9, 2003.

CWNCD and CWSCD are responsible for maintaining over 6,700 miles of the CITY's wastewater collection system and over 1,200 miles of the CITY's stormwater system. CWNCD and CWSCD generate and complete over 300,000 work orders per year in connection with such maintenance. Prior to FAST, each work order was a separate piece of paper, and Sewer and Stormwater maps were outdated, barely legible copies of copies. Stacks of paper were manually sorted by supervisors in an attempt to give a field crew an assignment of work within the same general geographical area.

FAST replaced this cumbersome manual and paper processes with a state-of-the-art, wireless, mobile work management system. Supervisors create work assignments electronically for CWNCD and CWSCD crews in FAST. In the field, CWNCD and CWSCD crews complete the work and enter closure and timekeeping information on an electronic work order using a laptop secured in the LASAN truck. The FAST system captures that information and transfers it to LASAN'S enterprise maintenance management system (ELLIPSE) using a software integration between FAST and

ELLIPSE. By using LASAN's existing work management system, ELLIPSE, LASAN is able to leverage its investment by using all the built-in functionality of an enterprise maintenance management system and maintain all asset history in the same database.

The Automatic Vehicle Location (AVL) module of FAST also sends GPS coordinates to supervisors at their workstations at remote site locations using wireless modems installed in each vehicle. The AVL allows CWNCD and CWSCD supervisors to maintain overall situational awareness and better direct and manage their resources in the field.

Additionally, the Document Management module of FAST provides BOE GIS maps to CWNCD and CWSCD field crews so they have access to current and complete sewer and stormwater infrastructure data; Thomas Bros. Maps; and other geographical information.

FAST is a web-based application, built using the proprietary off-the-shelf modules described above from the NaviGate suite of products by Gatekeeper Systems. The NaviGate application framework is designed so that the modules work together seamlessly and additional modules can be added as needed to support additional or new business requirements.

ABB Enterprise Software, the developer of ELLIPSE software, together with Gatekeeper Systems, built the integration between ELLIPSE and FAST. By using

LASAN's existing work management system, ELLIPSE, LASAN is able to leverage its investment by using all the built-in functionality of an enterprise maintenance management system and maintain all asset history in the same database.

FAST is currently used by over 300 CWNCD and CWSCD personnel and is installed in over 180 LASAN vehicles. All components of FAST are owned by or licensed to LASAN.

This sole source AGREEMENT is needed to continue to allow and authorize CONTRACTOR to provide software maintenance, consulting expertise, enhancements, and support services for the NaviGate products and interfaces to ELLIPSE and the BOE's GIS. Failure to keep this application and its interfaces operating properly would severely impact CWNCD/CWSCD who rely on FAST to perform their daily field operations.

#### **ARTICLE 4 – RESPONSIBILITIES OF AND SERVICES TO BE PERFORMED BY THE CONTRACTOR**

The services required under this AGREEMENT include CONTRACTOR technical support as deemed necessary by the CITY PROJECT MANAGER for the successful software maintenance and enhancement of NaviGate Software Products and their integrations to other applications as set forth herein and in any applicable Task Order. CONTRACTOR shall provide appropriate staff as required by the CITY to perform

specified tasks. When CITY desires CONTRACTOR services, a Task Order will be issued detailing the tasks and deliverables. Once the Task Order is issued, the CONTRACTOR shall provide a statement of services specifying details of the work to be performed, time schedule and cost estimate for the completion of each task. Once the statement of services is approved, the CITY PROJECT MANAGER will issue a notice to proceed. If, after the submission of a statement of services, it appears that the actual cost or schedule will exceed the estimate on the statement of services, the CONTRACTOR shall revise the statement of services within 10 business days, and await approval and reissuance of a notice to proceed by the City before performing the work detailed by the statement of services. No work shall be performed under this AGREEMENT without a written notice to proceed. Services shall include, but not be limited to the following:

4.1 CONTRACTOR shall perform the services described in Article 4.4 of the Agreement. CONTRACTOR shall perform such work with a degree of skill and diligence normally employed by professional analysts or contractors performing the same or similar services.

4.2 CONTRACTOR warrants that the services will be performed consistent with generally accepted industry standards.

4.3 Maintenance of Records

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by CITY. These records shall be retained for a period of no less than three (3) years from the later of the following: (1) final payment made by CITY, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized CITY personnel or CITY'S representatives at any time. CONTRACTOR shall provide any reports requested by CITY regarding performance of this Contract. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, CONTRACTOR may, upon CITY'S written approval, submit the required information to CITY in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

#### 4.4 Scope of Services

##### 4.4.1 SOFTWARE MAINTENANCE – (Estimate: \$1,584,000)

CONTRACTOR will provide staff and/or resources, to be approved by the CITY PROJECT MANAGER, which approval shall not be unreasonably withheld, conditioned or delayed, to work directly with CITY and other

contractors on the support and maintenance of FAST and all additional NaviGate products acquired by LASAN.

Software maintenance and support includes but is not limited to upgrades, patches, technical support, and telephone support as set forth in an applicable purchasing order form executed by both CONTRACTOR and the CITY. Software maintenance shall be billed and paid on an annual basis for the NaviGate products in use by LASAN.

#### 4.4.2 ENHANCEMENTS – (Estimate: \$825,000)

CONTRACTOR will provide staff and/or resources, to be approved by the CITY PROJECT MANAGER, which approval shall not be unreasonably withheld, conditioned or delayed, to work directly with CITY and other contractors to provide enhancements to the NaviGate Software for such reasons as to incorporate additional business practices, comply with regulatory requirements, incorporate new or upgraded software, etc. Enhancement services include but are not limited to the licensing of additional off-the-shelf modules, software configuration, reports, integrations, tuning, programming, testing, training, and documentation as set forth in an applicable Order Form executed by both CONTRACTOR and the CITY.

#### 4.4.3 INTEGRATION SUPPORT – (Estimate: \$100,000)

CONTRACTOR will provide staff and/or resources, to be approved by the CITY PROJECT MANAGER, which approval shall not be unreasonably withheld, conditioned or delayed, to work directly with CITY and other contractors on the support of integrations to LASAN's NaviGate products as a result of software upgrades, patches or new systems. The support includes but is not limited to configuration, tuning, modifications, programming, testing, and documentation.

#### 4.4.4 PROJECT MANAGEMENT AND PROFESSIONAL SERVICES – (Estimate: \$20,000)

CONTRACTOR will provide project management services and support as agreed to by CITY in tasks deemed by CONTRACTOR and agreed to by CITY PROJECT MANAGER to require project management duties including but not limited to planning, developing schedules, training, project status reports, coordinating resources and activities.

#### 4.5 CONTRACTOR Schedule of Services and Costs

4.5.1 In the event the CITY has authorized CONTRACTOR an amount of service hours to prepare a project schedule with subsequent revisions and project reports, the CONTRACTOR shall prepare and submit to the PROJECT MANAGER, at the PROJECT MANAGER's discretion, a schedule of the services to be performed. The schedule of services shall be submitted, if

requested, within fifteen (15) calendar day to the CITY after the CITY signs the Task Order and CONTRACTOR is notified in writing via electronic mail or regular mail. This schedule shall be electronically provided in Microsoft Project format. The CONTRACTOR shall perform the work in accordance with the signed Task Order and prepare revisions and updates as agreed mutually in the Task Order.

4.5.2 The CONTRACTOR's schedule referenced in 4.5.1 above shall show the dates on which each part or division of the work is expected to be started and completed and shall show all submittal deliverables associated with each part or division of the work, allowing a minimum of fifteen (15) calendar days for the PROJECT MANAGER's review of each submittal unless a longer period of time is specified elsewhere in this AGREEMENT. The work activities making up the schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the work and such that it provides an appropriate basis for monitoring and evaluating the progress of the work. The schedule shall show all major work items, points of interface with the CITY and milestone submittals. In the event the CITY has authorized project management hours to prepare the schedule and subsequent revisions and reports, the CONTRACTOR shall also submit a separate progress schedule listing all submittals required under the AGREEMENT and when it is anticipated that each submittal will be submitted. The PROJECT MANAGER will review the

CONTRACTOR's schedules and provide comments relative to overall compliance with requirements of the AGREEMENT documents.

4.5.3 In the event the CITY has authorized CONTRACTOR an amount of service hours to prepare a project schedule with subsequent revisions and project reports, the CONTRACTOR shall submit an updated schedule that accurately reflects the status of the work and incorporates all project changes as of submittal date to the PROJECT MANAGER at least five (5) days prior to the submittal of the CONTRACTOR's monthly payment request. The submittal of that updated schedule shall be a condition precedent to the processing of the monthly payment application. Updated schedules shall also be submitted at such other times as the PROJECT MANAGER may direct. Upon approval of an amended schedule, the approved changes shall be reflected in the next schedule update submittal by the CONTRACTOR, or other update submittal approved by the PROJECT MANAGER.

4.5.4 In the event the CITY has authorized project management hours to prepare the schedule and subsequent revisions and reports, the CONTRACTOR shall submit a progress report monthly. This will consist of a monthly narrative progress report. The purpose of the report is to provide a brief description of the status of the work and to acknowledge any problems and open issues that may affect timely completion.

4.5.5 In the event the CITY has authorized project management hours to prepare the schedule and subsequent revisions and reports and participate in meetings, the CONTRACTOR shall participate in Progress meetings with the PROJECT MANAGER. The frequency of these meetings shall be at the discretion of the PROJECT MANAGER. All meetings are to be comprehensively documented by the CONTRACTOR and related documentation distributed to attendees.

#### **ARTICLE 5 – KEY CONTRACTOR PERSONNEL**

5.1 CONTRACTOR designates the following person to represent CONTRACTOR in all matters pertaining to this AGREEMENT:

Mr. Joe Knight, Project Manager

99 East C Street, Suite 209

Upland, California 91786

Telephone: 949-453-1940

E-mail: [jdk@gatekeeper.com](mailto:jdk@gatekeeper.com)

Additional technical specialists shall be assigned subject to the CITY PROJECT MANAGER's approval.

- 5.2 CONTRACTOR agrees that personnel assigned to these positions at the commencement of services under this AGREEMENT shall serve in these positions as long as required by the CONTRACT, and CONTRACTOR shall not change personnel assigned to these positions without five (5) business days' prior written notice via electronic mail or regular mail by CONTRACTOR and written consent and approval via electronic mail or regular mail within the five (5) business days by CITY's Project Manager, whose consent shall not be withheld unreasonably.
- 5.3 Unless otherwise approved by CITY, CONTRACTOR shall use its own employees to perform the services described in this Contract. CITY has the right to review and approve any personnel who are assigned to work under this CONTRACT. CONTRACTOR shall remove personnel from performing work under this Contract if requested to do so by CITY.
- 5.4 CONTRACTOR shall not use Subcontractors to assist in performance of this CONTRACT without the prior written approval of CITY. If CITY permits the use of Subcontractors, CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT and paying all Subcontractors. CITY has the right to approve CONTRACTOR'S Subcontractors, and CITY reserves the right to request replacement of any Subcontractor. CITY does not have any obligation to pay

CONTRACTOR'S Subcontractors, and nothing herein creates any privity of contract between CITY and any Subcontractor.

#### **ARTICLE 6 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY**

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

The CITY shall furnish, without charge, facilities and resources available to the CONTRACTOR as deemed reasonably necessary and appropriate by the CITY.

#### **ARTICLE 7 – TERM OF AGREEMENT AND TIME OF EFFECTIVENESS**

Unless terminated as provided under Article 9 or extended by a duly approved amendment to this AGREEMENT signed by the parties, the term of this AGREEMENT shall be for 5 years from the date of full execution, with 2 renewal options of 3 years

each, to be exercised by the CITY at its sole discretion. In addition to the 2 renewal option of 3 years each, the CITY may elect to extend the AGREEMENT on a month-to-month basis for a maximum of six (6) months, during which period the CITY and the CONTRACTOR shall continue performance under the terms of this AGREEMENT. The CITY may extend the AGREEMENT on month-to-month basis prior to the end of either the initial five (5) year term if the CITY elects not to renew, or the end of the eleven (11) year term if the CITY elected to renew, by providing the CONTRACTOR written notice via electronic mail or regular mail at least 90 days prior to expiration of the AGREEMENT. During the period of extension, the CITY shall increase the expenditure amount for services performed by the CONTRACTOR by a maximum of five (5) percent of the total contract cost. During such period of month-to-month operation, if either party decides to terminate the relationship, the CONTRACTOR shall be obligated to continue performance for at least sixty (60) days after written notice from the terminating party.

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of CONTRACTOR by the person or persons authorized to bind CONTRACTOR;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;

- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of CITY by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

**ARTICLE 8 – SUSPENSION**

At CITY’s sole discretion, CITY may suspend any or all services provided under this Contract by providing CONTRACTOR with written notice of suspension. Upon receipt of the notice of suspension, CONTRACTOR shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to CITY until CITY gives written notice to recommence the services

**ARTICLE 9 – TERMINATION**

9.1 Termination for Convenience

CITY may terminate this Contract, in whole or in part, for CITY’s convenience at any time by providing CONTRACTOR thirty (30) days written notice. Upon receipt of the notice of termination, CONTRACTOR shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. CITY shall pay CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONTRACTOR to effect the termination. Thereafter, CONTRACTOR shall have no further claims against CITY under this Contract. All finished and unfinished documents

and materials procured for or produced under this Contract, including all intellectual property rights CITY is entitled to, shall become CITY property upon the date of the termination. CONTRACTOR agrees to execute any documents necessary for CITY to perfect, memorialize, or record CITY'S ownership of rights provided herein.

## 9.2 Termination for Breach of Contract

9.2.1 Except as provided in Article 21, if CONTRACTOR fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, CITY may give CONTRACTOR written notice of the default. CITY's default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of CITY. Additionally, CITY's default notice may offer CONTRACTOR an opportunity to provide CITY with a plan to cure the default, which shall be submitted to CITY within the time period allowed by CITY. At CITY'S sole discretion, CITY may accept or reject CONTRACTOR'S plan. If the default cannot be cured or if CONTRACTOR fails to cure within the period allowed by CITY, then CITY may terminate this Contract due to CONTRACTOR'S breach of this Contract.

9.2.2 If the default under this Contract is due to CONTRACTOR'S failure to maintain the insurance required under this Contract, CONTRACTOR shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of services. CONTRACTOR shall not recommence performance

until CONTRACTOR is fully insured and in compliance with CITY'S requirements.

9.2.3 If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then CITY may immediately terminate this Contract.

9.2.4 If CONTRACTOR engages in any dishonest conduct related to the performance or administration of this Contract or violates CITY'S laws, regulations or policies relating to lobbying, then CITY may immediately terminate this Contract.

#### 9.2.5 Acts of Moral Turpitude

- a) CONTRACTOR shall immediately notify CITY if CONTRACTOR or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
- b) If CONTRACTOR or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, CITY may immediately terminate this Contract.
- c) If CONTRACTOR or a Key Person is charged with or indicted for an Act of Moral Turpitude, CITY may terminate this Contract after providing CONTRACTOR an opportunity to present evidence of CONTRACTOR'S ability to perform under the terms of this Contract.

d) Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

e) For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of CONTRACTOR.

9.2.6 In the event CITY terminates this Contract as provided in this section, CITY may procure, upon such terms and in the manner as CITY may deem appropriate, services similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to CITY for all of its costs and damages, including, but not limited to, any excess costs for such services.

9.2.7 If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this section, or that the default was excusable under

the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.

9.2.8 The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

9.3 In the event that this Contract is terminated, CONTRACTOR shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

#### **ARTICLE 10 – SUBCONTRACT APPROVAL**

All subcontracts that are one half of one percent (0.5%) of the total CONTRACT amount or \$10,000, whichever is greater, shall require the prior approval of the CITY. A copy of all subcontracts shall be submitted to the CITY PROJECT MANAGER showing the subcontractor's name and dollar amount of each subcontract. Wholly-owned subsidiaries of the CONTRACTOR shall not be considered subcontractors/ subconsultants. The CONTRACTOR shall not substitute SUBCONTRACTORS listed in this AGREEMENT without the prior written approval of the CITY. The CONTRACTOR shall not add SUBCONTRACTORS to assist in the performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, the CONTRACTOR shall remain responsible for performing all aspects of this Contract. The CITY has the right to approve the CONTRACTOR'S subcontractors, and the CITY

reserves the right to request replacement of subcontractors. The CITY does not have any obligation to pay the CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS.

## **ARTICLE 11 - COMPENSATION, INVOICING, AND PAYMENT**

### 11.1 Definitions

"Cost" as used herein is defined as the sum of: (1) Billing Salary Rates; (2) Indirect Expenses; (3) Other Direct Cost with no markup; and (4) Profit as defined below.

11.1.1 "Billing Salary Rates" shall be at the rates approved by the PROJECT MANAGER, to be charged by CONTRACTOR for employees' time directly chargeable to their performance of the project work. Any adjustments to the CONTRACTOR's direct salary rate shall be in accordance with established LASAN policies existing at the time the adjustment is approved. Billing Salary Rate increases are limited to once per year, per employee, on the anniversary date of the CONTRACTOR's AGREEMENT execution, and are subject to the approval of the CITY. In no case shall the "Billing Salary Rates" exceed the actual salary rate paid to the employee.

Any adjustment to the SUBCONTRACTORS' salaries and Hourly Billing Rates shall be reviewed and approved by the PROJECT MANAGER prior to invoicing. Adjustments to SUBCONTRACTORS' salaries and Hourly Billing Rates may be increased one time per year, per employee, on the anniversary date of the CONTRACTOR's AGREEMENT execution. Any such increases shall be in accordance with established LASAN policy at the time the adjustment is approved.

11.1.2 "Indirect Expenses" (including payroll burden, overhead, and general and administrative expenses) shall be at the rate applied to the Billing Salary Rate. Indirect Expenses for this CONTRACTOR Services Agreement is fixed at a rate of ten percent (10%) for CONTRACTOR personnel located in the Home Office and fixed at a rate of ten percent (10%) for CONTRACTOR personnel located in the Field Office for the duration of the AGREEMENT.

11.1.3 "Other Direct Cost" includes those costs of CONTRACTOR directly identifiable to or incurred in the performance of services hereunder, including but not limited to reproduction, freight, messenger service, travel (in accordance with established CITY policies), equipment owned or rented by CONTRACTOR (any equipment purchased and paid for under this PROJECT shall become the property of the CITY), auto mileage

charges (based on Internal Revenue Service (IRS) allowable amounts), and supplies used in the work. Communication expenses, cost of office space, equipment, and supplies furnished to CITY personnel at CONTRACTOR's location shall be paid by the CITY. The CITY shall receive the full benefit of any free travel, frequent flyer mileage, discounts and/or any other advantages which are acquired by the CONTRACTOR as a result of CITY sponsored travel.

11.1.4 "Subcontract Expenses" shall be the actual amount paid by CONTRACTOR to SUBCONTRACTOR for their services to the CITY plus an administrative fee of five percent (5%).

11.1.5 "Profit" shall be limited to ten percent (10%) and shall be applied to the summation of "Indirect Expenses" and "Billing Salary Rates".

11.1.6 Costs incurred by the CONTRACTOR prior to the actual date of full execution of this AGREEMENT shall only be payable to CONTRACTOR if said costs were incurred in completing any task specifically authorized by this AGREEMENT and said costs are reviewed and approved by the CITY and said approval for payment occurs after this AGREEMENT is fully executed.

11.1.7 **Exhibit A**, Project Services Cost Estimate, attached hereto and incorporated herein by this reference, shall be the format used for the estimated total cost by task for each Task Order. For Task Orders specifying a Cost Reimbursement Plus Profit compensation method, the Project Services Cost Estimate shall be based upon the estimated hours of labor at estimated direct labor rates, the allocated indirect expenses, other direct costs, and profit. For Task Orders specifying a Lump Sum compensation method, the Project Services Cost Estimate shall set forth the total project cost and the appropriate payment milestones.

11.1.8 Hourly Billing Rate is a method of compensation whereby CONTRACTOR is compensated on an hourly basis pursuant to established Hourly Billing Rates set forth in **Exhibit F**. The hourly billing rates shall be approved by the PROJECT MANAGER for CONTRACTOR employees' time directly chargeable to their performance of the project work and includes salary, fringe benefits, overhead, profit, and all other expenses incurred by CONTRACTOR. Payments shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Project Task Order.

Description	Hourly Rate
Principal	\$300
Project Manager	\$250

Software Engineer	\$135
Clerical	\$45

11.1.9 The CITY will not pay for CONTRACTOR's nor SUBCONTRACTOR's personnel for invoice preparation. The CITY will not pay for CONTRACTOR's nor SUBCONTRACTOR's communication expenses and computer time charges.

## 11.2 Compensation

CONTRACTOR agrees to perform the work specified in Article 4.4, and CITY shall compensate CONTRACTOR either on a Lump Sum basis, a Cost Reimbursement Plus Profit basis or an Hourly Billing Rate basis upon mutual written agreement with each Task Order. CITY shall designate the compensation method in the Task Orders to be issued under this AGREEMENT. If the Task Order specifies the compensation as being on a Cost Reimbursement Plus Profit or Hourly Billing Rate basis, payment shall be made in accordance with the Task Cost Estimates to be provided for CITY approval prior to issuance of Notice to Proceed for any task under this AGREEMENT. Hourly rates, SUBCONTRACTOR fees and other direct/indirect charges shall be in accordance with rates set herein. Individuals who CONTRACTOR wishes to add to the project must have their compensation rate approved by the CITY's PROJECT MANAGER, and a

revised Scope of Services must be prepared as evidence of this addition. The total cost ceiling shall be stated in the Task Order.

If the Task Order specifies the compensation as being on a Lump Sum basis, payment shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Task Order. The total cost ceiling shall be stated in the Task Order.

The total cost ceiling for this AGREEMENT is \$2,529,000.00

### 11.3 Invoicing and Payment

11.3.1 For Task Orders specifying a Cost Reimbursement Plus Profit method of payment, CONTRACTOR shall, once each month, submit to CITY an original and three (3) copies of an invoice in a format acceptable to the CITY which will include all costs and a proportionate amount of profit due CONTRACTOR for services provided during the preceding month. Payments shall be made upon the submission of a complete and accurate invoice and supporting documentation. CITY shall review CONTRACTOR'S invoice in accordance with the CITY's review procedures. The CITY shall make a good faith effort to process payments in 60 days.

11.3.2 Invoices shall be prepared in such form and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be reasonably required by CITY to establish the amount of such invoices as allowable expenses. A SUBCONTRACTOR Utilization Attachment, **Exhibit O**, listing current MBE/WBE/SBE/EBE/DVBE/OBE amounts invoiced as part of the invoicing procedures. CONTRACTOR must provide an explanation for any item that falls short of the planned utilization with specific plans and recommendations for recovering any shortfalls in utilization. No such invoices shall be paid without the SUBCONTRACTOR Utilization Invoice Attachment. All invoices shall be subject to audit for a period of four (4) years from the termination of this AGREEMENT.

11.3.3 CITY shall not be obligated to reimburse CONTRACTOR for costs incurred in excess of the Project Services Cost Estimate set forth. CONTRACTOR shall not be obligated to continue performance (including actions under the temporary stop work or termination clauses) or otherwise incur costs in excess of the Project Services Cost Estimate unless and until CITY shall have notified CONTRACTOR in writing that such Project Services Cost Estimate has been increased and shall have specified in such notice an estimated Project Services Cost Estimate, which shall thereupon constitute the cost performance of this AGREEMENT. In the absence of the specified notice, CITY shall not be obligated to reimburse CONTRACTOR for any costs in excess of the

Project Services Cost Estimate set forth, whether those costs were incurred during the course of the AGREEMENT or as a result of termination.

11.3.4 When and to the extent that the Project Services Cost Estimate has been increased, any costs incurred by CONTRACTOR in excess of the Project Services Cost Estimate for any Task Order, prior to such increase, shall be allowable to the same extent as if such costs had been incurred after the increase.

11.3.5 Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for CITY to comply with its governing legal requirements, CITY shall have no obligation to make any payments to CONTRACTOR unless CITY shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. CITY warrants that it has made such an appropriation in its current budget year and that it will use its best efforts to include such appropriations in subsequent years' budgets. CONTRACTOR agrees that any services provided by CONTRACTOR, purchases made by CONTRACTOR or expenses incurred by CONTRACTOR in excess of the appropriation(s) shall be free and without charge to CITY and CITY shall have no obligation to pay for the services, purchases or expenses. CONTRACTOR

shall have no obligation to provide any services, provide any equipment or incur any expenses in excess of the appropriated amount(s) until CITY appropriates additional funds for this Contract.

11.3.6 For Task Orders specifying a Lump Sum method of payment or the Hourly Billing Rate method, CONTRACTOR shall submit to CITY, upon the satisfactory completion of each task/milestone as detailed and defined in each Task Order, an original and three (3) copies of an invoice in a format acceptable to the CITY. CITY shall review CONTRACTOR'S invoice and notify CONTRACTOR of exceptions or disputed items and their dollar amount. The total invoice amount, less any exceptions or disputed items shall be considered approved by the CITY. CITY shall pay CONTRACTOR all amounts approved for payment after CITY'S PROJECT MANAGER receives CONTRACTOR'S invoice.

#### 11.4 False Claims Act

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

## **ARTICLE 12 - AMENDMENTS, CHANGES, OR MODIFICATIONS**

All amendments, changes or modifications to this Contract shall be in writing and signed and approved pursuant to the provisions of Article 7.

## **ARTICLE 13 – INDEMNIFICATION AND INSURANCE**

### 13.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, CONTRACTOR shall defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including CONTRACTOR'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by CONTRACTOR, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. This provision will survive expiration or termination of this CONTRACT.

### 13.2 INSURANCE

During the term of this Contract and without limiting CONTRACTOR'S obligation to indemnify, hold harmless and defend CITY, CONTRACTOR shall provide and maintain at its own expense a program of insurance having the coverage and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit C hereto). The insurance must: (1) conform to CITY'S requirements; (2) comply with the Insurance Contractual Requirements (Form General 146 in Exhibit C hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. CONTRACTOR shall comply with all Insurance Contractual Requirements shown on Exhibit C hereto. Exhibit C is hereby incorporated by reference and made a part of this Contract.

### 13.3 BONDS

All bonds required by CITY shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 et seq., as amended from time to time.

## **ARTICLE 14 – INDEPENDENT CONTRACTORS**

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

## **ARTICLE 15 – WARRANTY AND RESPONSIBILITY OF CONTRACTOR**

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

15.2 CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by CONTRACTOR under this AGREEMENT. CONTRACTOR shall, at no additional cost to CITY, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, calculations, and other services.

15.3 The CONTRACTOR shall exhibit proper professional judgment in the use of information furnished by CITY in Article 6. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, CONTRACTOR will notify the CITY in accordance with Article 20 in a reasonable manner within three (3) business days after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.

15.4 CONTRACTOR shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.

15.5 Except as specified in Article 13 and as otherwise provided in this AGREEMENT, the CONTRACTOR shall be and shall remain liable, in accordance with applicable law, for all damages to CITY caused by CONTRACTOR'S negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to CITY, CITY-furnished data, or any third party (excepting any CONTRACTOR or SUBCONTRACTOR of any tier).

#### **ARTICLE 16 - INTELLECTUAL PROPERTY INDEMNIFICATION**

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the CITY, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONTRACTOR, or its Subcontractors, in performing the work under this Contract; or (2) as a result of CITY'S actual or intended use of any Work Product (as defined in Article 18) furnished by CONTRACTOR, or its Subcontractors, under this Contract. The rights and remedies of

CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

#### **ARTICLE 17 INTELLECTUAL PROPERTY WARRANTY**

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

#### **ARTICLE 18 – OWNERSHIP AND LICENSE**

**"Work Product"** means any of CONTRACTOR's written expression, in all media and formats, of CONTRACTOR's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, modifications, interfaces, source and object code, software, and other technical information that CONTRACTOR has already created, possessed or owned before commencing any work under this Agreement or that CONTRACTOR will be creating or acquiring under this Agreement. All Work Product is the property of CONTRACTOR and is licensed perpetually and nonexclusively to the CITY, at no additional license fee, pursuant to the terms of the license for software contained in the License Agreement between the parties and subject to the terms hereof, with the License Agreement being subordinate to this Agreement in case of conflict of terms.

Work Product shall not include any documents, material, data, drawings, plans, specifications, requirements, modifications, screen displays, interfaces, computer data files, basis for calculations, notes, and reports originated or prepared by the CITY, or a third party hired by CITY, the ownership of which shall vest with, and remain the property of, the CITY, whether the property is tangible or intangible.

**ARTICLE 19 – SUCCESSORS AND ASSIGNS**

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 28.

**ARTICLE 20 – CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION**

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

To The CITY:

Contact Person: Nicolas Tran

Address: Information and Control Systems Division

1149 S. Broadway

M/S 911

Los Angeles, California, 90015

Telephone: 213-485-2281

E-mail: nicolas.tran@lacity.org

To CONTRACTOR:

Contact Person: Mr. Joe Knight

Address: Gatekeeper Systems

99 East C Street, Suite 209

Upland, CA 91786

Telephone: 949-453-1940

E-mail: [jdk@gatekeeper.com](mailto:jdk@gatekeeper.com)

**ARTICLE 21 – FORCE MAJEURE (EXCUSABLE DELAYS)**

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of CONTRACTOR shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both CONTRACTOR and Subcontractor, and without any fault or negligence of either of them. In such case, CONTRACTOR shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit CONTRACTOR to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event CONTRACTOR'S delay or failure to perform arises out of a Force Majeure Event, CONTRACTOR agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

#### **ARTICLE 22 – SEVERABILITY**

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

#### **ARTICLE 23 – DISPUTES**

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

## **ARTICLE 24 – ENTIRE AGREEMENT**

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

## **ARTICLE 25 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT**

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and CITY, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. CONTRACTOR shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to CONTRACTOR.

In any action arising out of this Contract, CONTRACTOR consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

**ARTICLE 26 – CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION**

**CERTIFICATE REQUIRED**

For the duration of this Contract, CONTRACTOR shall maintain valid Business Tax Registration Certificate(s) as required by CITY'S Business Tax Ordinance, Section 21.00 et seq. of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

Should any such certificate(s) become suspended or revoked, it is the CONTRACTOR'S responsibility to report the matter immediately to the CITY PROJECT MANAGER.

**ARTICLE 27 – WAIVER**

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

**ARTICLE 28 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION**

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

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

## **ARTICLE 29 – PERMITS**

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for CONTRACTOR'S performance of this Contract and shall pay any fees required therefore. CONTRACTOR shall immediately notify CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to CONTRACTOR'S performance of this Contract.

## **ARTICLE 30 –BEST TERMS**

Throughout the term of this Contract, CONTRACTOR, shall offer CITY the best terms, prices, and discounts that are offered to any of CONTRACTOR'S customers for similar goods and services provided under this Contract.

## **ARTICLE 31 - CLAIMS FOR LABOR AND MATERIALS**

CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produced by CONTRACTOR hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

**ARTICLE 32 – BREACH**

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

**ARTICLE 33 - MANDATORY PROVISIONS PERTAINING TO**

**NON-DISCRIMINATION IN EMPLOYMENT**

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and CITY. In performing this Contract, CONTRACTOR shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person’s race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.

- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits

Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this CONTRACT by reference.

- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this CONTRACT.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this CONTRACT by reference and will be known as the "Affirmative Action Program" provisions of this CONTRACT.

Any subcontract entered into by CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

#### **ARTICLE 34 – CHILD SUPPORT ASSIGNMENT ORDERS**

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, CONTRACTOR shall fully comply with all applicable State and Federal employment reporting requirements. Failure of CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of CONTRACTOR to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this Contract. Failure of CONTRACTOR or principal owner to cure the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by CONTRACTOR for work to be

performed under this CONTRACT must include an identical provision.

## **ARTICLE 35 – LIVING WAGE AND SERVICE CONTRACTOR WORKER**

### **RETENTION ORDINANCE**

#### 35.1 LIVING WAGE ORDINANCE

The CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 et seq., as amended from time to time. The CONTRACTOR further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision. (Exhibit H)

#### 35.2 SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

The CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

## **ARTICLE 36 – ACCESS AND ACCOMMODATIONS**

CONTRACTOR represents and certifies that:

- A. CONTRACTOR shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 et seq., the Rehabilitation Act of 1973, as amended, 29

U.S.C. Section 701 et seq., the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;

- B. CONTRACTOR shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. CONTRACTOR shall provide reasonable accommodation upon request to ensure equal access to CITY-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that the CITY is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

### **ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE**

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 et seq., as amended from time to time.

### **ARTICLE 38 – LOS ANGELES BUSINESS INCLUSION PROGRAM**

Unless otherwise exempted prior to bid submission, CONTRACTOR shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. CONTRACTOR shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. CONTRACTOR shall perform subcontractor outreach activities through BAVN. CONTRACTOR shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall CONTRACTOR reduce their level of effort, without prior written approval of CITY.

### **ARTICLE 39 – DISCLOSURE ORDINANCES**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this CONTRACT is subject to the Slavery Disclosure Ordinance, Section 10.41 et seq., of the Los Angeles Administrative Code, as may be amended from time to time. The CONTRACTOR certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision. Exhibit E [SLAVERY DISCLOSURE ORDINANCE EXHIBIT] is attached hereto and incorporated herein by this reference.

The CONTRACTOR shall comply with Los Angeles Administrative Code Section 10.50 et seq., 'Disclosure of Border Wall Contracting.' The City, LASAN, or any representative of the City may terminate this CONTRACT at any time if the City, LASAN, or any representative of the City determines that the CONTRACTOR failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

#### **ARTICLE 40 – CONTRACTOR PERFORMANCE EVALUATION ORDINANCE**

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

**ARTICLE 41 – MUNICIPAL LOBBYING ORDINANCE**

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

**ARTICLE 42- FIRST SOURCE HIRING ORDINANCE**

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 et seq., as amended from time to time. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

**ARTICLE 43- COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12) FOR MEASURE H/CONTRACTOR CONTRIBUTIONS/FUNDRAISING**

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected CITY office, CONTRACTOR, CONTRACTOR’S principals, and CONTRACTOR’S Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”) shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles CITY to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for

certain elected CITY officials or candidates for elected CITY office for twelve months after this Contract is signed. Additionally, a CONTRACTOR subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any CONTRACTOR subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # \_\_\_\_\_.

Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“CITY”) officials and candidates for elected CITY office for twelve months after the CITY contract is signed. You are required to provide the names and contact information of your principals to the CONTRACTOR and to amend that information within ten business days if it changes during the twelve-month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at [ethics.lacity.org](http://ethics.lacity.org) or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

#### **ARTICLE 44 - COMPLIANCE WITH THE IRAN CONTRACTING ACT OF 2010**

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with CITY for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit." Exhibit R

#### **ARTICLE 45 - INTEGRATED CONTRACT**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of Article 12 hereof.

#### **ARTICLE 46 – DATA PROTECTION**

- A. CONTRACTOR shall protect, using the most secure means and technology that is commercially available, CITY-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). CONTRACTOR shall notify CITY in writing as soon as reasonably feasible, and in any event within twenty-four hours, of CONTRACTOR'S discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and

system outage, instability or degradation due to computer malware or virus. CONTRACTOR shall begin remediation immediately. CONTRACTOR shall provide daily updates, or more frequently if required by CITY, regarding findings and actions performed by CONTRACTOR until the Data Breach or Security Incident has been effectively resolved to CITY'S satisfaction. CONTRACTOR shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with CITY. At CITY'S sole discretion, CITY and its authorized agents shall have the right to lead or participate in the investigation. CONTRACTOR shall cooperate fully with CITY, its agents and law enforcement.

- B. If CITY is subject to liability for any Data Breach or Security Incident, then CONTRACTOR shall fully indemnify and hold harmless CITY and defend against any resulting actions.

#### **ARTICLE 47 – LOCAL BUSINESS PREFERENCE ORDINANCE**

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

#### **ARTICLE 48 – CONTRACTOR'S USE OF CRIMINAL HISTORY FOR CONSIDERATION OF EMPLOYMENT APPLICATIONS**

CONTRACTOR shall comply with the City Contractors' Use of Criminal History for

Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

**ARTICLE 49 – COMPLIANCE WITH IDENTITY THEFT LAWS AND PAYMENT CARD DATA SECURITY STANDARDS**

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to Customers. CONTRACTOR also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, CONTRACTOR shall verify proper truncation of receipts in compliance with FACTA.

**ARTICLE 50 – COMPLIANCE WITH CALIFORNIA PUBLIC RESOURCES CODE SECTION 5164**

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes

as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, CONTRACTOR shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by CITY. CONTRACTOR is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of CONTRACTOR working on premises to pass a fingerprint and background check through the California Department of Justice at CONTRACTOR'S sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

#### **ARTICLE 51 – POSSESSORY INTERESTS TAX**

Rights granted to CONTRACTOR by CITY may create a possessory interest. CONTRACTOR agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, CONTRACTOR shall pay the property tax. CONTRACTOR acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

## **ARTICLE 52 – CONFIDENTIALITY**

All documents, information and materials provided to CONTRACTOR by CITY or developed by CONTRACTOR pursuant to this Contract (collectively “Confidential Information”) are confidential. CONTRACTOR shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by CITY or as required by law. CONTRACTOR shall immediately notify CITY of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

## **ARTICLE 53 – COUNTERPARTS**

This AGREEMENT may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by the CITY) and sent by e-mail shall be deemed original signatures.

## **ARTICLE 54 – COVID-19 VACCINATION REQUIREMENTS**

Employees of the CONTRACTOR and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, “Contractor Personnel”) must be fully vaccinated against the novel coronavirus 2019 (“COVID-19”) prior to (1) interacting in person with CITY employees, contractors, or volunteers, (2) working on CITY property

while performing services under this Agreement, and/or (3) coming into contact with the public while performing services under this AGREEMENT (collectively, "In-Person Services"). "Fully vaccinated" means that 14 or more days have passed since Contractor Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Contractor Personnel to perform In-Person Services, the CONTRACTOR shall obtain proof that such Contractor Personnel has been fully vaccinated. The CONTRACTOR shall retain such proof for the document retention period set forth in this AGREEMENT. The CONTRACTOR shall grant medical or religious exemptions to Contractor Personnel as required by law. If Contractor wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, Contractor shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by Contractor. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments. Furthermore, Contractor shall immediately notify City if Contractor Personnel performing In-Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

## **ARTICLE 55 - CONTRACTOR DATA REPORTING**

If CONTRACTOR is a for-profit, privately owned business, CONTRACTOR shall, within 30 days of the effective date of the CONTRACT and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the CONTRACT), report the following information to CITY via the Regional Alliance Marketplace for Procurement ("RAMP") or via another method specified by CITY: Contractor's and any Subcontractor's annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner ("Contractor/Subcontractor Information"). CONTRACTOR shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by CITY.

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

**CITY OF LOS ANGELES**

**CONTRACTOR NAME**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Commissioner, Board of Public Works

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Commissioner, Board of Public Works

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**HYDEE FELDSTEIN SOTO, City Attorney**

By: \_\_\_\_\_

Virginia Choi

Title: Deputy City Attorney

Date: \_\_\_\_\_

**ATTEST:**

**HOLLY WOLCOTT, City Clerk**

By: \_\_\_\_\_

Title: Deputy City Clerk

Date: \_\_\_\_\_



City of Los Angeles Mail - Fwd: Signature for Business Inclusion Program Waiver

TRANSMITTAL NO. 2

Alexa Esparza &lt;alex.esparza@lacity.org&gt;

## Fwd: Signature for Business Inclusion Program Waiver

John Pattison &lt;john.pattison@lacity.org&gt;

Wed, Jul 7, 2021 at 10:01 AM

To: Alexa Esparza &lt;alex.esparza@lacity.org&gt;, Dan Seto &lt;dan.seto@lacity.org&gt;

Cc: Nancy Lantin &lt;nancy.lantin@lacity.org&gt;

Hi Alexa and Dan.

The Mayor's Office has approved the BIP waiver for Gatekeeper.

Please see Daniel Cho's email below. His email/approval will be sufficient should BCA question the BIP waiver, or request proof that it was approved.

### John Pattison

Senior Management Analyst

Centralized Contracts Unit

LA Sanitation and Environment

Administration Division

Phone: (213) 485-3239

Email: John.Pattison@LACity.org

Web: www.lacitysan.org/



----- Forwarded message -----

From: **Daniel Cho** <daniel.cho@lacity.org>

Date: Wed, Jul 7, 2021 at 8:58 AM

Subject: Re: Signature for Business Inclusion Program Waiver

To: John Pattison &lt;john.pattison@lacity.org&gt;

Cc: CPO Team &lt;CPO-Team@lacity.org&gt;, Jessica Lopez &lt;jessica.e.lopez@lacity.org&gt;, Nancy Lantin &lt;nancy.lantin@lacity.org&gt;

Hello John,

The waiver is approved. Thank you.

On Tue, Jul 6, 2021 at 4:07 PM John Pattison &lt;john.pattison@lacity.org&gt; wrote:

Hello CPO team :)

I don't know what happened to this request. Perhaps we missed an email on our end, but the PM claims to have never received a response to their BIP waiver request (see attached).

Are you able to check your records and confirm whether this BIP waiver request was received and approved (or not)?

Thank you,

**John Pattison**

Senior Management Analyst

**Centralized Contracts Unit**

LA Sanitation and Environment

Administration Division

Phone: (213) 485-3239

Email: John.Pattison@LACity.org

Web: www.lacitysan.org/



[Quoted text hidden]

[Quoted text hidden]

—  
Daniel Cho  
Senior Policy Analyst  
Chief Procurement Officer's Team  
Mayor's Office of Budget and Innovation