

**SERVICE AGREEMENT BETWEEN  
THE CITY OF HUNTINGTON BEACH AND  
L & G ENTERPRISES  
FOR ON-CALL MAINTENANCE OF MARINA TRASH SKIMMERS UNDER THE  
HUNTINGTON HARBOUR MARINA TRASH SKIMMERS TRASH REMOVAL  
PROJECT**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach a municipal corporation of the State of California, hereinafter called "City," and LOUIS W. PASOZ, a sole proprietor doing business ("DBA") as L & G ENTERPRISES hereinafter referred to as "Contractor."

**Recitals**

- A. The City desires to retain a Contractor having special skill and knowledge in the field of installation and maintenance of Marina Trash Skimmers.
- B. Contractor represents that Contractor is able and willing to provide such services to the City.
- C. In undertaking the performance of this Agreement, Contractor represents that it is knowledgeable in its field and that any services performed by Contractor under this Agreement will be performed in compliance with such standards as may reasonably be expected from a comparable company or firm in the field.

Contractor has been selected to perform these services pursuant to Huntington Beach Municipal Code Chapter 3.02,

NOW, THEREFORE, it is agreed by City and Contractor as follows:

**1. Scope of Services**

Contractor shall provide all services as described in Exhibit "A," which is attached hereto and incorporated into this Agreement by this reference. These services shall sometimes hereinafter be referred to as the "Project."

Contractor hereby designates LOUIS W. PASOZ who shall represent it and be its sole contact and agent in all consultations with City during the performance of this Agreement.

**2. City Staff Assistance**

City shall assign a staff coordinator to work directly with Contractor in the performance of this Agreement.

### **3. Compensation**

a. City agrees to pay, and Contractor agrees to accept as total payment for its services, the rates and charges identified in Exhibit A. The total sum to be expended under this Agreement, shall not exceed \$ 100,080 during the term of this Agreement.

b. Payment by City shall be made within thirty (30) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

c. Contractor shall be paid pursuant to the terms of Exhibit "B."

### **4. Term**

Time is of the essence of this Agreement. The services of Contractor are to commence as soon as practicable after the execution of this Agreement by City (the "Commencement Date") and terminate April 2, 2028, unless terminated earlier in accordance with the provisions of this Agreement. All tasks specified in Exhibit "A" shall be completed no later than ten [designate] years working days from the Commencement Date. The time for performance of the tasks identified in Exhibit "A" are generally to be shown in Exhibit "A." This schedule and Term may be amended to benefit the Project if mutually agreed to in writing by City and Contractor.

In the event the Commencement Date precedes the Effective Date, Contractor shall be bound by all terms and conditions as provided herein.

### **5. Extra Work**

In the event City requires additional services not included in Exhibit "A" or changes in the scope of services described in Exhibit "A," Contractor will undertake such work only after receiving written authorization from City. Additional compensation for such extra work shall be allowed only if the prior written approval of City is obtained.

### **6. Disposition of Plans, Estimates and Other Documents**

Contractor agrees that title to all materials prepared hereunder, including, without limitation, all original drawings, designs, reports, both field and office notices, calculations computer code, language, data or programs, maps, memoranda, letters and other documents, shall belong to City, and Contractor shall turn these materials over to City upon expiration or termination of this Agreement or upon Project completion, whichever shall occur first. These materials may be used by City as it sees fit.

### **7. Hold Harmless**

Contractor hereby agrees to protect, defend, indemnify and hold harmless City, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all, claims, damages, losses, expenses, judgments, demands and defense costs, and consequential



damage or liability of any kind or nature, however caused, including those resulting from death or injury to Contractor's employees and damage to Contractor's property, arising directly or indirectly out of the obligations or operations herein undertaken by Contractor, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including but not limited to concurrent active or passive negligence, except where caused by the active negligence, sole negligence, or willful misconduct of the City. Contractor will conduct all defense at its sole cost and expense and City shall approve selection of Contractor's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

#### **8. Workers Compensation Insurance**

Pursuant to California Labor Code Section 1861, Contractor acknowledges awareness of Section 3700 *et seq.* of this Code, which requires every employer to be insured against liability for workers' compensation; Contractor covenants that it will comply with such provisions prior to commencing performance of the work hereunder.

Contractor shall obtain and furnish to City workers' compensation and employer's liability insurance in an amount of not less than the State statutory limits.

Contractor shall require all subcontractors to provide such workers' compensation and employer's liability insurance for all of the subcontractors' employees. Contractor shall furnish to City a certificate of waiver of subrogation under the terms of the workers' compensation and employer's liability insurance and Contractor shall similarly require all subcontractors to waive subrogation.

#### **9. General Liability Insurance**

In addition to the workers' compensation and employer's liability insurance and Contractor's covenant to defend, hold harmless and indemnify City, Contractor shall obtain and furnish to City, a policy of general public liability insurance, including motor vehicle coverage covering the Project/Service. This policy shall indemnify Contractor, its officers, employees and agents while acting within the scope of their duties, against any and all claims arising out or in connection with the Project/Service, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars (\$1,000,000) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars (\$1,000,000) for this Project/Service. This policy shall name City, its officers, elected or appointed officials, employees, agents, and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to the Project/Service shall be deemed excess coverage and that Contractor's insurance shall be primary.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage.

**10. Automobile Liability Insurance**

Contractor shall obtain and furnish to City an automotive liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for Contractor's automotive liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and a separate "Additional Insured Endorsement" page listing both the policy number and naming the "*City of Huntington Beach, its officers, elected or appointed officials, employees, agents and volunteers*" as additional insured on the endorsement. The above-mentioned insurance shall not contain a self-insured retention, "deductible" or any other similar form of limitation on the required coverage except with the express written consent of City.

**11. Certificate of Insurance**

Prior to commencing performance of the work hereunder, Contractor shall furnish to City a certificate of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; the certificate shall:

- a. provide the name and policy number of each carrier and policy;
- b. state that the policy is currently in force; and
- c. promise that such policy shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

Contractor shall maintain the foregoing insurance coverage in force until the work under this Agreement is fully completed and accepted by City.

The requirement for carrying the foregoing insurance coverage shall not derogate from Contractor's defense, hold harmless and indemnification obligations as set forth in this Agreement. City or its representative shall at all times have the right to demand the original or a copy of the policy of insurance. Contractor shall pay, in a prompt and timely manner, the premiums on the insurance hereinabove required.

**12. Independent Contractor**

Contractor is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of City. Contractor shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for Contractor and its officers, agents and employees and all business licenses, if any, in connection with the Project and/or the services to be performed hereunder.



### **13. Conflict of Interest**

Contractor covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

### **14. Termination**

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Contractor shall be entitled to receive and the City shall pay Contractor compensation for all services performed by Contractor prior to receipt of such notice of termination, subject to the following conditions:

a. As a condition of such payment, the Executive Director may require Contractor to deliver to the City all work product completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Contractor consents to the City's use thereof for such purposes as the City deems appropriate.

b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

### **15. Exclusivity and Amendment**

This Agreement represents the complete and exclusive statement between the City and Contractor, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Contractor. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Contractor or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

### **16. Assignment**

Inasmuch as this Agreement is intended to secure the specialized services of Contractor, Contractor may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other Contractors retained by City.

### **17. City Employees and Officials**

Contractor shall employ no City official nor any regular City employee in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial

interest in this Agreement in violation of the applicable provisions of the California Government Code.

**18. Notices**

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to Contractor's agent (as designated in Section 1 hereinabove) or to City as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses below. City and Contractor may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, a reputable overnight carrier or U.S. certified U.S. certified mail-return receipt requested:

To City:

City of Huntington Beach  
Attn: Scott Smith  
2000 Main Street  
Huntington Beach, CA 92648

To Contractor:

Louis W. Pasoz  
L & G Enterprises  
2947 Calle Frontera  
San Clemente, CA 92673

**19. Consent**

When City's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transactions or event.

**20. Modification**

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

**21. Section Headings**

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

**22. Interpretation of this Agreement**

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or



plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

**23. Duplicate Original**

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

**24. Immigration**

Contractor shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

**25. Legal Services Subcontracting Prohibited**

Contractor and City agree that City is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. Contractor understands that pursuant to *Huntington Beach City Charter* Section 309, the City Attorney is the exclusive legal counsel for City; and City shall not be liable for payment of any legal services expenses incurred by Contractor.

**26. Confidentiality**

Contractor recognizes that in the performance of its duties under this Agreement, it must conduct its activities in a manner designed to protect information of a sensitive nature from improper use or disclosure. Contractor warrants that it will use reasonable efforts consistent with practices customary in the facilities management industry in recruiting, training and supervising employees and in otherwise performing its duties hereunder in order to achieve this result. In the furtherance of this, Contractor agrees, at the request of the City, to require its employees to execute written undertakings to comply with the foregoing confidentiality provision.

**27. Discrimination**

Contractor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Contractor affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

**28. Jurisdiction - Venue**

This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed and construed in accordance with the laws of the State of California. This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**29. Professional Licenses**

Contractor shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Huntington Beach and all other governmental agencies. Contractor shall notify the City immediately and in writing of her inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

**30. Attorney's Fees**

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the nonprevailing party.

**31. Survival**

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

**32. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the State of California.

**33. Signatories**

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

**34. Entirety**

(a) The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also



# EXIHIBIT A

## SCOPE OF SERVICES

### BACKGROUND:

In April of 2016, the City of Huntington Beach partnered with Westchester Bay HOA, Peter's Landing Marina, Huntington Harbour Marina, and OC Parks and applied for and was awarded a grant from the Orange County Transportation Authority (OCTA) Measure M2 Environmental Cleanup Program (ECP), Tier 1 to purchase and install Marina Trash Skimmer (MTS) units. These MTS units will be purchased and installed in different locations within the waters of Huntington Harbour to remove floating and partially submerged trash and debris as well as hydro-carbons from the surface.

The City has executed Memorandum of Understanding (MOU) with each of the grant partners to purchase, install, and maintain the MTS units as installed in each of the locations within Huntington Harbour.

The MOU as executed by the City and grant partners require the City to install the MTS units and provide maintenance of the MTS units on a quarterly basis at a minimum. The grant partners are required to provide electricity to power the MTS units and service the units weekly at a minimum. Weekly service to be conducted by grant partners includes the removal of accumulated debris from the MTS units for proper disposal. This minimum weekly service conducted by the grant partners is not covered by the scope of work as detailed below.

### 1. SCOPE OF WORK:

#### **Maintenance, debris removal and 24/7 technical support of Marina Trash Skimmers (MTS).**

The City will contract with Contractor for the maintenance, debris removal and 24/7 technical support of the MTS units installed at the various locations in Huntington Harbour. The maintenance and support service to be provided by L & G Enterprises consists of two maintenance schedules (Maintenance Schedule A and Maintenance Schedule B). The City will contract with Contractor to provide services as detailed in Maintenance Schedule A but reserves the right to contract for services under Maintenance Schedule B as needed based on factors such as excessive accumulation of debris, mechanical failures, part failures, that require additional services not covered in Maintenance Schedule A. The costs for services detailed in Maintenance Schedule A and Maintenance Schedule B are detailed in EXIHIBIT B.

acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement warranty, fact or circumstance not expressly set forth in this Agreement.

(b) All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

**35. Effective Date**


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers. This Agreement shall be effective on the date of its approval by the Director of Public Works. This Agreement shall expire when terminated as provided herein.

CONTRACTOR  
L & G ENTERPRISES, a sole  
proprietor

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

  
LOUIS W. PASOZ

CITY OF HUNTINGTON BEACH, a  
municipal corporation of the State of  
California

  
Director of Public Works

APPROVED AS TO FORM:

  
City Attorney

bko 2/5/18  
NW



## **Maintenance Schedule A**

### **Quarterly Service:**

Removal of debris plus removal of filter grid, pump and float switch for the purpose of high pressure washing items to remove marine crustaceans, also to include pump anode check-up and replacement as necessary (usually annually but dependent upon level of hydrolysis in the water) and replacement of worn out parts such as stainless steel hinges and other hardware.

## **Maintenance Schedule B**

### **Monthly Service:**

Includes all service items included in the quarterly service such as removal of the filter grid, pump and float switch for the purpose of high pressure washing of items to remove marine crustaceans to be conducted monthly. However, the replacement of anodes will be a separate fee for the replacement of anodes as needed and is not included in the fee schedule as included in the quarterly service.

### **Devices/Products Covered:**

Marina Trash Skimmer units including mounting brackets, logic control panel and sensor.

### **Excluded Services:**

City understands and agrees that services required to recover from failures and/or incidents caused by any of the following circumstances are not considered normal maintenance and are not covered under this Agreement:

- Service and repair made necessary due to accidents or acts of God including damage from fire, water, wind, earthquakes, lightning, terrorism, transporting equipment, vandalism, and burglary;
- Service and repair made necessary by the alteration or modification of equipment other than that authorized by Contractor;
- Service and repair of damage or problems caused by neglect, malicious activity, or misuse including, without limitation, use of the MTS for purpose other than which it was designed, by the City, its employees, third-party contractors, or grant partners;
- Service or repair due to electrical damage caused by electrical wiring at system location or resulting from electrical surges, sags, or spikes.

## **2. ADDITIONAL SERVICES:**

City may occasionally require additional or amended services outside the terms of this Agreement (collectively, "Additional Services") and not included in Maintenance Schedule A or

B. Contractor will provide a detailed scope of work and labor quote for any Additional Services required by City. City will be required to execute a change order for any Additional Service before any work for such Service is performed and understands that a separate invoice(s) will be generated for such work. Examples of Additional Services include (unless pre-authorized in writing by Contractor):

- Relocation of MTS unit(s);
- Planning, project management, research, and advisory consulting services.



## **EXHIBIT B**

### **SCHEDULE OF BILLING RATES**

#### **Pricing:**

In consideration of the Services contemplated by this Agreement, City shall pay Contractor as follows:

#### **Fees:**

Quarterly Service: \$265/unit

Monthly Service: \$140/unit

Service charges will be processed on monthly interval date of proposed service start date as agreed unless City cancels service within 30 days of said date.

#### **Hourly Rates:**

Hourly rates for services not covered by fixed fee: \$45 for first hour, \$25 for each additional hour as pre-approved by City.