

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF  
HUNTINGTON BEACH AND SC CLEANING SPECIALIST FOR THE  
INSTALLATION AND MAINTENANCE OF MARINA TRASH  
SKIMMER(S) IN HUNTINGTON HARBOUR**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into on \_\_\_\_\_, 2020, by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (hereinafter referred to as "CITY"), and SC CLEANING SPECIALIST, a California CORPORATION (hereinafter referred to as "PARTNER").

WHEREAS, the CITY is committed to the protection of water quality of Huntington Harbour and enhancing the aesthetic and ecological quality and benefits of the waters, beaches, and marinas within Huntington Harbour which is a significant coastal resource providing the CITY's residents and visitors with economic and social benefits such as boating, swimming, and kayaking. In addition to the social and economic benefits, the waters of Huntington Harbour are directly connected to the Bolsa Chica Wetlands which is one of the last undisturbed coastal wetlands in California providing important nesting and breeding grounds for migratory and native bird species, breeding and spawn habitat for fish, and a safe haven for many endangered and rare species.

WHEREAS, the CITY has received a grant from the Orange County Transportation Authority 2016 Measure M2 Tier 1 funding to purchase and install Marina Trash Skimmers to remove floating and partially submerged trash and debris as well as hydrocarbons from the surface waters of Huntington Harbour. The Marina Trash Skimmers will be installed in areas where trash and debris tend to accumulate to maximize the amount of trash and debris collected and removed from the waters within Huntington Harbour. The City has partnered with private and public partners to identify appropriate locations to install the Marina Trash Skimmers including at 16011 Santa Barbara Lane, Huntington Beach, CA 92649.

NOW, THEREFORE, for and in consideration of the promises and covenants hereinafter

contained and intending to be legally bound, the parties covenant and agree as follows:

### **SECTION 1. TERM**

This MOU will become effective on the date it is approved by CITY COUNCIL and shall terminate ten (10) years thereafter, except with respect to any obligations hereunder which are to be performed thereafter. Upon mutual written consent of the parties, this Agreement may be extended for an additional five (5) year terms.

### **SECTION 2. OBLIGATIONS OF CITY**

The obligations of the CITY pursuant to this Agreement shall be as follows:

1. CITY shall purchase and install the Marina Trash Skimmer(s) at the pre-designated location(s) as agreed by the City and SC CLEANING SPECIALIST in accordance with the manufacturer's specification.
2. CITY shall contract with the manufacturer for the delivery and installation of the Marina Trash Skimmer(s) and appurtenances.
3. CITY shall acquire the required permits and/or approvals for the installation of the Marina Trash Skimmer(s) and appurtenances.
4. CITY and/or the CITY's agent shall maintain the Marina Trash Skimmer(s) in a manner consistent with the manufacturer's Operation and Maintenance Manual Sections 6 and 7. Maintenance shall be conducted on a monthly and quarterly basis.
5. CITY and/or the CITY's agent shall repair or replace any parts or other auxiliary components required for the proper function of the Marina Trash Skimmer(s) throughout the duration of the MOU.

### **SECTION 3. OBLIGATIONS OF PARTNER**

The obligations of the PARTNER pursuant to this Agreement shall be as follows:

1. PARTNER shall maintain the Marina Trash Skimmer(s) in a manner consistent with the manufacturer's Operation and Maintenance Manual Sections 6 and 7. Maintenance shall be performed on a daily, weekly, and monthly basis.
2. PARTNER shall provide access to CITY personnel or agent to the CITY for maintenance purposes.
3. PARTNER shall notify the CITY prior to disconnecting electrical power to the Marina Trash Skimmer(s) or conducting any actions that would restrict or impair the functionality or efficiency of the Marina Trash Skimmer(s).
4. PARTNER shall request prior approval from the CITY prior to relocating the Marina Trash Skimmers.
5. PARTNER shall provide electrical power to the Marina Trash Skimmer(s) and incur the financial obligations required to provide electrical power.
6. PARTNER shall provide access in a timely manner to CITY staff or contracted staff to perform inspections and maintenance of the Marina Trash Skimmer(s) as necessary.
7. PARTNER shall notify the CITY to report damages or loss of function of the Marina Trash Skimmer(s) within forty-eight (48) hours.

#### **SECTION 4. HOLD HARMLESS**

PARTNER shall protect, defend, indemnify and hold harmless CITY, its officers, officials, employees, and agents (CITY) from and against any and all liability, loss, damage, expenses, costs (including without limitation, costs and fees of litigation of every nature) arising out of or in connection with the installation, maintenance, and performance of the Marina Trash Skimmer(s) or its failure to comply with any of its obligations contained in this MOU except such loss or damage which was caused by the sole negligence or willful misconduct of CITY or contractors working at the behest of the CITY.



## **SECTION 5. WORKERS' COMPENSATION INSURANCE**

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

PARTNER shall maintain workers' compensation insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each occurrence, One Hundred Thousand Dollars (\$100,000) bodily injury by disease, each employee, Two Hundred Fifty Thousand Dollars (\$250,000) bodily injury by disease, policy limit.

PARTNER shall require all subcontractors to provide such workers' compensation insurance for all of the subcontractors' employees. PARTNER shall furnish to CITY a certificate of waiver of subrogation under the terms of the workers' compensation insurance and PARTNER shall similarly require all subcontractors to waive subrogation.

## **SECTION 6. GENERAL LIABILITY INSURANCE**

In addition to the workers' compensation insurance and PARTNER covenant to indemnify CITY and its agent, PARTNER shall obtain and furnish to CITY, a policy of general public liability insurance, including motor vehicle coverage. Said policy shall indemnify PARTNER, its officers, agents and employees, while acting within the scope of their duties, against any and all claims arising out of or in connection with this Agreement, 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 \$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 \$1,000,000. Said policy shall name CITY, its agents, its officers, employees and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable shall be deemed excess coverage and that PARTNER's insurance shall be primary.

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

**SECTION 7. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED ENDORSEMENTS**

Prior to commencement of this Agreement, PARTNER shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; these certificates shall:

- (1) Provide the name and policy number of each carrier and policy;
- (2) State that the policy is currently in force; and
- (3) Promise to provide that such policies shall not be canceled or modified without thirty (30) days' prior written notice of CITY; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

PARTNER shall maintain the foregoing insurance coverage in force during the entire term of the Agreement or any renewals or extensions thereof or during any holdover period.

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

**SECTION 8. ASSIGNING AS BREACH**

PARTNER shall encumber, assign, or otherwise transfer this MOU, or any right or interest in this MOU, without the express written consent of the CITY. Any encumbrance, assignment or transfer, without the prior written consent of the CITY, whether it is voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of the CITY, terminate this MOU.

#### **SECTION 9. TERMS BINDING ON SUCCESSORS**

All the terms, covenants and conditions of this MOU shall inure to the benefit of and be binding upon the parties and their successors and assigns. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment hereinbefore set forth.

#### **SECTION 10. CONFLICT OF INTEREST**

PARTNER shall employ no CITY official or any regular CITY employee in the work performed pursuant to this MOU. No officer or employee of CITY shall have any financial interest in this MOU in violation of the applicable provisions of the *California Government Code*.

#### **SECTION 11. CUMULATIVE REMEDIES**

The remedies given to the parties in this MOU shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this MOU.

#### **SECTION 12. WAIVER OF BREACH**

The waiver by CITY of any breach by PARTNER of any of the provisions of this MOU, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such breach or a waiver of any subsequent breach by PARTNER, either of the same or another provision of this MOU.

#### **SECTION 13. FORCE MAJEURE - UNAVOIDABLE DELAYS**

Should the performance of any act required by this MOU to be performed by either CITY or PARTNER be prevented or delayed by reason of an act of God, , inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused.

#### **SECTION 14. NOTICE**

Any written notice, given under the terms of this MOU, shall be either delivered personally or mailed, certified mail, postage prepaid, addressed to the party concerned, as follows:

CITY

City of Huntington Beach  
Attn: Jim Merid, Environmental  
Specialist  
Public Works Department  
2000 Main Street, P.O. Box 190  
Huntington Beach, CA 92648  
Phone: (714) 536-5431  
Email: JMerid@surfcity-hb.org

PARTNER

SC CLEANING SPECIALIST  
Attn: Daniel Gale  
Street Address: 16011 Santa Barbara Lane  
Huntington Beach, CA 92649  
Phone (562) 822-2773  
Email: BGMain@Aol.com



If a party desires to change the contact and/or address for notices set forth herein, said party shall provide 30 days advance written notice to the other party of any such change.

**SECTION 15. ATTORNEY'S FEES**

In the event suit is brought by either party to enforce the terms and provisions of this MOU or to secure the performance hereof, each party shall bear its own attorney's fees. The prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

**SECTION 16. CONTROLLING LAW AND VENUE**

The rights and liabilities of the parties, and the interpretation and construction of this MOU, shall be determined in accordance with the laws of the State of California. Any controversy arising out of or under this MOU, if litigated, shall be adjudicated in a court of competent jurisdiction in Orange County, California.

**SECTION 17. SECTION TITLES**

The section titles in this MOU are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of intent of this MOU or in any way affect this MOU.

**SECTION 18. TIME OF ESSENCE**

Time is of the essence with respect to all provisions of this MOU in which a definite time for performance is specified including, but not limited to, the expiration of this MOU.

**SECTION 19. SURVIVAL OF INDEMNITIES**

Termination of this MOU shall not affect the right of CITY to enforce any and all indemnities given or made by PARTNER under this MOU, nor shall it affect any provision of this MOU that expressly states that the provision shall survive termination thereof.



**SECTION 20. NONLIABILITY OF CITY OFFICIAL, EMPLOYEES OR AGENTS**

No elective or appointed CITY or CITY affiliated board, commission or member thereof, or officer, official, employee or agent of CITY shall be personally liable to PARTNER , its successors and assigns, of any default or breach by CITY under this MOU or for any amount which may become due to PARTNER , its successors and assigns, under this MOU or for any obligation of CITY under this MOU.

**SECTION 21. TERMINATION**

This MOU may be terminated by either party with or without cause upon sixty (60) days notice in writing. Removal of the Marina Trash Skimmer(s) to occur within one hundred twenty (120) days of notice of termination.

**SECTION 22. MODIFICATIONS IN WRITING**

This MOU contains and embraces the entire agreement between the parties hereto and neither it nor any part of it may be changed, altered, modified, limited or extended orally or by any other agreement between the parties unless such agreement be expressed in writing, signed and acknowledged by CITY and PARTNER, or their successors in interest.

**SECTION 23. PARTIAL INVALIDITY**

Should any provision of this MOU be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this MOU shall remain in full force and their effect unimpaired by the holding, so long as the reasonable expectations of the parties hereto are not materially impaired.

**SECTION 24. NO TITLE INTEREST**

No title interest of any kind is hereby given and PARTNER shall never assert any claim or title to the Marina Trash Skimmer(s) or any other public property.

**SECTION 25. ENTIRETY**

The foregoing sets forth the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by and through their authorized officers the day, month and year first above written.

SC Cleaning Specialist, a California corporation

By: David Salehi

David Salehi  
Print name

president  
Title

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

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

INITIATED AND APPROVED:

[Signature]  
Director of Public Works

REVIEWED AND APPROVED:

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

[Signature]  
City Attorney *mv*