

**PROFESSIONAL SERVICES AGREEMENT
(Ocean Blue Environmental Services, Inc.)**

THIS AGREEMENT is made this _____ day of _____, 2023, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **Ocean Blue Environmental Services, Inc.**, herein after referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove City Council authorization, dated October 24, 2023.
2. CITY desires to utilize the services of CONTRACTOR to **furnish all materials, equipment, and labor for biological waste clean-up for the City of Garden Grove.**
3. The services and prices provided by Contractor to City are in accordance with the services, equipment and the prices provided by Contractor in its successful public bid to the City of Los Angeles. Contractor agrees to honor the same pricing schedule that was originally submitted to the City of Los Angeles for the services outlined in this Agreement, which was adopted by the Los Angeles Board of Harbor Commissioners. A copy of the City of Los Angeles' Agreement, Contract Number 23-9976 is attached as Attachment A and incorporated herein by reference.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The initial term of the agreement shall be from full execution through September 30, 2024, with an option to extend said agreement an additional two (2) years, for a total performance period of three (3) years. Option years shall be exercised one (1) year at a time, at the sole option of the CITY. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with the City of Los Angeles Agreement which is attached as Attachment A and is hereby incorporated by reference. Contractor is required to present evidence to support performed work.
2. **Services to be Provided.** The services to be performed and equipment to be provided by CONTRACTOR shall consist of as-needed services for the consolidated handling of hazardous and non-hazardous waste, including transportation, storage, recycling, and disposal of said waste, in compliance with state and federal hazardous waste, health and safety regulations and performing services that are in accordance with the services set forth in the City of Los

Angeles Agreement which is attached hereto as Attachment A and incorporated herein by reference.

3. **Compensation.** CONTRACTOR shall be compensated as follows:

3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) One Hundred Ninety Thousand Dollars (\$190,000.00), per year, payable in arrears and in accordance with the rates set forth in the City of Los Angeles Agreement (Attachment A).

3.2 **Payment.** For work under this Agreement, payment shall be made per invoice for work completed. For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on schedule included in Attachment A.

3.3 **Records of Expenses.** CONTRACTOR shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.

3.4 **Termination.** CITY and CONTRACTOR shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

4. **Insurance requirements.**

4.1 **COMMENCEMENT OF WORK.** CONTRACTOR/CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance. The insurers shall waive their rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.

4.2 **WORKERS COMPENSATION INSURANCE.** During the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.

4.3 **INSURANCE AMOUNTS.** CONTRACTOR shall maintain the following insurance for the duration of this Agreement:

- (a) Commercial general liability in an amount of \$5,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (b) Automobile liability in an amount of \$5,000,000.00 combined single limit (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (c) Pollution/environmental liability (including remediation and cleanup costs, and mold, and asbestos) in the amount not less than \$5,000,000; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (d) Auto Pollution in an amount no less than \$5,000,000; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (e) Professional liability in an amount not less than \$1,000,000. Insurance companies must be admitted and licensed In California and have a Best's Guide Rating of A-Class VII or better, as approved by the City. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced either by a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An **On-Going and Completed Operations Additional Insured Endorsement** for the policy under section 4.3 (a) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's

requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (c) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insured under the environmental/pollution/asbestos liability policy. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An MCS-90 for the policy under for the policy under section 4.3 (d) shall designate City, its officers, officials, employees, agents, and volunteers as additional insureds.

In the event any of CONTRACTOR's underlying policies do not meet policy limits within the insurance requirements, CONTRACTOR shall provide, for the policy under 4.3 (f), the schedule of underlying policies for a follows form excess liability policy, states that the excess policy follows form on the insurance certificate, and an additional insured endorsement for the excess liability policy designating CITY, its officers, officials, employees, agents, and volunteers as additional insureds.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount which may become due to CONTRACTOR.
6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of the CITY, and shall

obtain no rights to any benefits which accrue to CITY'S employees.

8. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
 - a. (Address of Contractor)
Ocean Blue Environmental Services, Inc.
925 W. Esther Street
Long Beach, CA 90813
 - b. (Address of CITY) (with a copy to):
City of Garden Grove Garden Grove City Attorney
11222 Acacia Parkway 11222 Acacia Parkway
Garden Grove, CA 92840 Garden Grove, CA 92840
10. **CONTRACTOR'S PROPOSAL.** Contractor shall be bound by all the terms, conditions and specifications set forth in the Port of Los Angeles Agreement attached as Attachment A hereto. In the event of any inconsistency between the terms of the Port of Los Angeles Agreement and the Agreement, the Agreement shall govern.
11. **Licenses, Permits, and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement.
12. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONTRACTOR is permitted to subcontract any part of this Agreement,

CONTRACTOR shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONTRACTOR. CITY will deal directly with and will make all payments to CONTRACTOR.

15. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.

16. **Indemnification.** CONTRACTOR agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all 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.

17. **Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefor by the Garden Grove City Council for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the CITY.

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(Agreement Signature Block On Next Page)

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____
City Manager

ATTESTED:

City Clerk

Date: _____

"CONTRACTOR"
Ocean Blue Environmental Services, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Tax ID No. _____

Contractor's License: _____

Expiration Date: _____

APPROVED AS TO FORM:

Garden Grove City Attorney

Date

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.