

AGREEMENT FOR EQUIPMENT PURCHASE AND SERVICES

Moleaer, Inc.

Water Treatment Equipment Purchase and Service

This Agreement for Equipment Purchase and Services (the "Agreement") is made and entered into as of _____, by and between the City of Lake Elsinore, a municipal corporation ("City") and Moleaer, Inc., a Delaware corporation ("Consultant").

RECITALS

A. The City has determined that it requires the following equipment and related services:

Water Treatment Equipment and Services for Lake Elsinore

B. Consultant has submitted to City a proposal, dated May 24, 2024, attached hereto as Exhibit A ("Consultant's Proposal") and incorporated herein, to provide the water treatment equipment and services to City pursuant to the terms of this Agreement.

C. Consultant possesses the skill, experience, ability, background, certification and knowledge to deliver and install the equipment and perform the services described in this Agreement on the terms and conditions described herein.

D. City desires to purchase the equipment from Consultant and retain Consultant to perform the services as provided herein and Consultant desires to provide the equipment and perform the services as set forth in this Agreement.

AGREEMENT

1. Scope of Services. Consultant shall perform the services described in Consultant's Proposal (Exhibit A). Consultant shall provide such services at the time, place, and in the manner specified in Consultant's Proposal, subject to the direction of the City through its staff that it may provide from time to time.

2. Time of Performance.

a. Time of Essence. Time is of the essence in the performance of this Agreement. The time for delivery of the equipment and performance of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the professional services contemplated pursuant to this Agreement according to the agreed upon performance schedule in Consultant's Proposal (Exhibit A).

b. Performance Schedule. Consultant shall commence the development of the equipment and perform the services pursuant to this Agreement upon receipt of a written notice to proceed and shall deliver and install the equipment and perform all services within the time period(s) established in the Consultant's Proposal (Exhibit A). When requested by Consultant, extensions to the time period(s) specified may be approved in writing by the City Manager.

c. Term. The term of this Agreement shall commence upon execution of this Agreement and shall continue until the equipment has been delivered and installed and the services and related work are completed in accordance with the Consultant's Proposal (Exhibit A).

3. Compensation. Compensation to be paid to Consultant shall be in accordance with the fees set forth in Consultants' Proposal (Exhibit A), which is attached hereto and incorporated herein by reference. In no event shall Consultant's compensation exceed 1 Million Five Hundred and Ninety Five Thousand and Eight Hundred and Forty Seven dollars (1,595,847) without additional written authorization from the City. Notwithstanding any provision of Consultant's Proposal to the contrary, out of pocket expenses set forth in Exhibit A shall be reimbursed at cost without an inflator or administrative charge. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Method of Payment. Consultant shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Consultant's bills shall be segregated by project task, if applicable, such that the City receives a separate accounting for work done on each individual task for which Consultant provides services. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Consultant no later than forty-five (45) days after receipt of the monthly invoice by City staff.

5. Background Checks. At any time during the term of this Agreement, the City reserves the right to make an independent investigation into the background of Consultant's personnel who perform work required by this Agreement, including but not limited to their references, character, address history, past employment, education, social security number validation, and criminal or police records, for the purpose of confirming that such personnel are lawfully employed, qualified to provide the subject service or pose a risk to the safety of persons or property in and around the vicinity of where the services will be rendered or City Hall. If the City makes a reasonable determination that any of Consultant's prospective or then current personnel is deemed objectionable, then the City may notify Consultant of the same. Consultant shall not use that personnel to perform work required by this Agreement, and if necessary, shall replace him or her with a suitable worker.

6. Suspension or Termination.

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of such notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City, pursuant to Section entitled "Method of Payment" herein.

7. Plans, Studies, Documents.

a. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notepad internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request. City shall have sole determination of the public's rights to documents under the Public Records Act, and any third-party requests of Consultant shall be immediately referred to City, without any other actions by Consultant.

b. Licensing of Intellectual Property. This Agreement creates a nonexclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require that all subcontractors agree in writing that City is granted a nonexclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

c. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs relating to project for which Consultant's services are rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

8. Consultant's Books and Records.

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

9. Independent Contractor.

a. Consultant is and shall at all times remain as to the City a wholly independent contractor pursuant to California Labor Code Section 3353. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatsoever against City, or bind City in any manner.

b. Notwithstanding any other federal, state and local laws, codes, ordinances and regulations to the contrary and except for the fees paid to Consultant as provided in the Agreement, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

10. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

11. Interests of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered

by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and

b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

12. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

13. Compliance with Laws.

a. Consultant shall comply with all local, state and federal laws and regulations applicable to the services required hereunder, including any rule, regulation or bylaw governing the conduct or performance of Consultant and/or its employees, officers, or board members.

b. Consultant represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a City business license.

14. Licenses. Consultant represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall maintain a City of Lake Elsinore business license.

15. Indemnity. Consultant shall indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of

law arises from the sole negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

16. Insurance Requirements.

a. Insurance. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, unless modified by the City's Risk Manager, the following insurance policies.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City. In the event that Consultant is exempt from Worker's Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California, Consultant shall submit to the City a Certificate of Exemption from Workers Compensation Insurance in a form approved by the City Attorney.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Required commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. No endorsement may be attached limiting the coverage.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence. Automobile liability coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

iv. Professional Liability Coverage. Consultant shall maintain professional errors and omissions liability insurance appropriate for Consultant's profession for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's services under this Agreement, whether such services are provided by the Consultant or by its employees, subcontractors, or sub consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single limit per occurrence basis.

b. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation, shall bear an endorsement whereby it is provided that, the City and its officers, employees, servants, volunteers and agents and independent contractors, including without limitation, the City Manager and City Attorney, are named as additional insureds. Additional insureds shall be entitled to the full benefit of all insurance policies in the same manner and to the same extent as any other insureds and there shall be no limitation to the benefits conferred upon them other than policy limits to coverages.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this Policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

17. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Lake Elsinore
Attn: City Manager
130 South Main Street
Lake Elsinore, CA 92530

With a copy to: City of Lake Elsinore
Attn: City Clerk
130 South Main Street
Lake Elsinore, CA 92530

If to Consultant: Moleaer, Inc.
Attn: Chris Stephan
3232 W El Segundo Blvd
Hawthorne, CA 90250

18. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant and the subcontractors listed in Exhibit B. Consultant shall be fully responsible to City for all acts or omissions of any subcontractors. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement except as provided in Exhibit B without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of those subcontractors. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

19. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

20. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

21. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and share the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

22. Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

23. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Consultant agrees to fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). It is agreed by the parties that, in connection with the Work or Services provided pursuant to this Agreement, Consultant shall bear all risks of payment or non-payment of prevailing wages under California law, and Consultant hereby agrees to defend, indemnify, and hold the City, and its officials, officers, employees, agents, and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

25. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Riverside.

27. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to

make this Agreement and to bind each respective party. The City Manager is authorized to enter into an amendment or otherwise take action on behalf of the City to make the following modifications to the Agreement: (a) a name change; (b) grant extensions of time; (c) non-monetary changes in the scope of services; and/or (d) suspend or terminate the Agreement.

28. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

29. Entire Agreement; Incorporation; Conflict. This Agreement contains the entire understanding between the parties relating to the obligations described herein. All prior or contemporaneous understandings, agreements, representations and statements, oral or written, are superseded in total by this Agreement and shall be of no further force or effect. Consultant's Proposal is incorporated only for the description of the scope of services and/or the schedule of performance and no other terms and conditions from such proposal shall apply to this Agreement unless specifically agreed to in writing. In the event of conflict, this Agreement shall take precedence over those contained in the Consultant's Proposal.

30. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

“CITY”

CITY OF LAKE ELSINORE, a municipal corporation

“CONSULTANT”

Moleaer, Inc., a Delaware corporation

City Manager

By:

Its:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Assistant City Manager

Attachments: Exhibit A – Consultant’s Proposal

Quote for City of Lake Elsinore - 2nd phase- 2 additional container systems |

About Moleaer

Moleaer™ is the global leader in nanobubble technology with a mission to unlock nanobubbles' full potential to enhance and protect water, food, and natural resources. Our patented nanobubble technology improves sustainable food production and processing, water and wastewater treatment, natural resource recovery, and restores aquatic ecosystems without chemicals. Our technology has been validated by extensive research and we have over 2,200 installations in more than 50 countries.

City of Lake Elsinore

130 South Main Street
Lake Elsinore, CA 92530
United States

Adam Gufarotti

agufarotti@lake-elsinore.org
19516743124

Reference: 20240524-144508470

Quote created: May 24, 2024

Quote expires: August 22, 2024



Moleaer Inc

3232 W El Segundo Blvd
Hawthorne California 90250
United States

Prepared by: Chris Stephan

chris@moleaer.com

Project Application

Moleaer is pleased to offer this proposal to the City of Lake Elsinore for 2 additional containerized Moleaer Oxygen Nanobubble systems to increase treatment capacity and continue on Lake Restoration Plan.

Purchase Terms

Payment terms:

-Downpayment, payment upon installation, service payment, exact amount TBD

Lead time: 12-22 wks

Administrative/contract contact:

Adam Gufarotti

On site Contact:

TBD

Moleaer is to provide:

- 2 containerized Moleaer oxygen nanobubble system
- *System Details, each: 2 x 20' container, 4400 gpm 125 hp pump, 2 x NBG8 Nanobubble Generator, up to 106#/hr O2 generator, 40 hp compressor, self cleaning intake screen and remote monitoring.
- Arrange freight, load and deliver containers to Lake Elsinore
- 10 days of On site commissioning support
- 1 yr of Moleaer Global Service support to ensure proper operation and maintenance per manufacturers requirements

Customer is to provide:

- All necessary permits, permissions, and access for use/maintenance
- Unloading of containers from trailers
- Supply and installation of barges
- Lifting, setting and securement of containers on the barge
- Supply and connection of 3ph 480V 400A 126kw power to each container
- Supply and connection of all exterior piping
- Supply and connection of all required buoys, warnings, moorings, signs, lights and beacons

Total	\$1,595,847.00
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PRODUCTS & SERVICES	SKU	QUANTITY	BILLING FREQUENCY	TERM	PRICE
Containerized Nanobubble System		2			\$1,565,274.00
50F1-607: Trinity, NBG 8, Imperial 316SS	50F1-607	4			\$0.00
AIR SEP: AS-L		2			\$0.00
4400 gpm pump with VFD drive		2			\$0.00
2 x 20' containers with access doors		2			\$0.00
Ingersoll Rand Rotary Screw Compressor		2			\$0.00
Remote Monitoring and Safety Systems		2			\$0.00
1 yr Maintenance -		1			\$0.00
-Startup/Commissioning		1			\$30,573.00
SUBTOTALS					PRICE
One-time subtotal					\$1,595,847.00

Total	\$1,595,847.00
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MOLEAER STANDARD TERMS AND CONDITIONS OF SALE (2023)

1. CONDITIONS. These Standard Terms and Conditions of Sale (these “Conditions”) govern the sale of products (the “Goods”) by Moleaer, Inc. (“Moleaer”) to the entity (“Buyer” and, with Moleaer, the “Parties”) named in Moleaer’s proposal, sales quote or sales agreement (the “Order” and, together with these Conditions, this “Contract”). Unless specified in another agreement between the Parties, this Contract constitutes the entire agreement between the Parties, supersedes all prior written or oral communications or understandings concerning the Goods and takes precedence over and cancels any other, different or conflicting terms or conditions of Buyer’s purchase order or acceptance. No waiver or amendment of any of the provisions of this Contract shall be effective unless in writing and executed by both Parties. Unless otherwise stated herein, Buyer’s receipt of any portion of the Goods shall constitute acceptance of these Conditions.

2. PRICES AND PAYMENT. All prices are quoted on a EXW, CIF, CFR or FCA basis. Unless otherwise specified in the Order, all freight and other transportation and insurance charges and costs shall be borne by Buyer and Buyer will be liable for any sales, use or excise tax, custom, inspection or testing fee, import duty, clearance expense or any other tax, fee, or charge imposed by any governmental authority upon the sale, purchase, delivery, storage, processing, use or consumption of the Goods. Unless otherwise specified in the Order, payment shall be required upon delivery of the Goods. Buyer shall pay interest on any overdue amount at the rate of one-percent (1%) per month, prorated weekly, without prejudice to any other rights of Moleaer.

3. DELIVERY. Unless specified in the Order, delivery of the Goods to a carrier at Moleaer’s factory shall constitute “delivery” to Buyer. If Buyer or its carrier does not take delivery of the Goods on the date scheduled by Moleaer, then Buyer shall promptly pay to Moleaer an inventory carrying cost equal to one-third of a percent (0.333%) of the purchase price for each unit of Goods held per day of delay. Title to and all risks of loss and/or damage to the Goods shall pass to Buyer upon delivery. Moleaer does not guarantee any delivery date unless specified in the Order.

4. LIMITED WARRANTY. Moleaer warrants that the Goods will be free from defects in material and workmanship for a period of twelve (12) months from delivery (the “Warranty Period”). Moleaer shall in no event be liable for defects or damage attributable to modifications performed or repair work done other than by Moleaer personnel, use of service parts or components not authorized by Moleaer, or abuse, accident, negligence, catastrophe, force majeure event, shipment, improper use including but not limited to circumstances where pumps and / or compressors included in the Goods are not operated in accordance with the original pump or compressor manufacturer’s specifications, maintenance, storage or application or any other external cause. EXCEPT FOR ANY WRITTEN PERFORMANCE WARRANTY THAT MOLEAER HAS EXPRESSLY INCORPORATED IN THIS CONTRACT, THE GOODS ARE PROVIDED BY MOLEAER “AS IS” AND WITH ALL FAULTS, AND MOLEAER SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. ANY IMPLIED WARRANTY THAT CANNOT BE DISCLAIMED BY LAW IS LIMITED TO THE DURATION OF THE WARRANTY PERIOD. MOLEAER DOES NOT WARRANT THAT THE GOODS WILL MEET BUYER’S REQUIREMENTS OR ACHIEVE ANY SPECIFIC RESULTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS SOLELY RESPONSIBLE FOR USE OF THE GOODS COMPLIANCE WITH APPLICABLE LAWS, RULES AND REGULATIONS.

5. CLAIMS; EXCLUSIVE REMEDY. Any warranty claim must be made to Moleaer in writing within ten (10) days of discovery of the alleged defect. After obtaining prior written authorization from Moleaer, Buyer shall return all allegedly defective Goods, freight pre-paid, for examination by Moleaer. If Moleaer finds that the Goods are defective and covered by the warranty, Moleaer’s sole obligation shall be, at Moleaer’s option, to repair or replace the Goods, or to refund the purchase price therefor, and to reimburse Buyer’s reasonable shipping costs. Buyer shall be responsible for all charges for handling of returned items not found defective. The remedy set forth in this paragraph 4 is Buyer’s sole and exclusive remedy for any breach of warranty or claim related to the Goods other than pursuant to any written performance warranty that Moleaer has expressly incorporated in this Contract.

6. LIMITED LIABILITY. MOLEAER SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING DAMAGES FOR LOST OR PROSPECTIVE PROFITS OR OTHER ECONOMIC DAMAGES, ARISING OUT OF OR RELATED TO THIS CONTRACT OR THE GOODS. MOLEAER’S TOTAL LIABILITY, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL NOT EXCEED THE PORTION OF THE PRICE PAID BY BUYER ALLOCABLE TO THE GOODS GIVING RISE TO THE LIABILITY. THE LIMITATIONS IN THIS PARAGRAPH WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. This limitation shall not apply to claims for personal injury directly caused by Moleaer’s willful or reckless acts.

7. INTELLECTUAL PROPERTY; CONFIDENTIALITY; USE; RESALE. Nothing in this Contract conveys any license, right, title or interest in or to the intellectual property of Moleaer to Buyer or any third party. To the extent Buyer obtains the Confidential Information (defined below) of Moleaer (including, for example, pricing information or trade secrets), Buyer shall not use such Confidential Information for any unauthorized purpose or disclose such Confidential Information to any third party. Without limiting the foregoing, Buyer shall not,

and shall not permit or assist any third party to, reverse engineer or otherwise attempt to extract, learn or derive proprietary elements of, the Goods, in whole or in part, or otherwise attempt to use the Goods to unfairly compete directly or indirectly with Moleaer. These restrictions shall not apply to information that Buyer can demonstrate (1) is in the public domain through no fault of Buyer or persons to whom it disclosed such information, (2) was independently developed by or for Buyer prior to receipt from Moleaer or (3) was disclosed to Buyer by a third party with the legal right to do so, free of any restrictions on subsequent disclosure. Buyer also may disclose such Confidential Information to the extent compelled by court order or applicable law, provided that it shall use its best efforts to provide Moleaer with prior written notice thereof and shall cooperate with Moleaer to obtain confidential treatment or a protective order therefor. For purposes of this Agreement,

“Confidential Information” means all nonpublic information disclosed by Moleaer or its agents, or otherwise obtained by Buyer, and that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Buyer shall use the Goods only at Buyer’s facility and only for the application for which they were sold by Moleaer. Without Moleaer’s prior written approval, Buyer shall not resell, transfer, exchange or otherwise assign the Goods to any third party.

8. TERMINATION OR CANCELLATION. Moleaer may terminate this Contract if Buyer fails to cure a material breach within fifteen (15) days after receiving written notice of the breach, or if Buyer becomes unable to meet its obligations as they mature, or if any proceeding under bankruptcy or insolvency laws is brought by or against Buyer, or if a receiver for Buyer is appointed or applied for or if an assignment for the benefit of creditors is made by Buyer. Buyer may cancel orders made pursuant to this Contract, provided that Buyer shall promptly pay cancellation charges as follows: (i) any Goods that are completed will be paid for in full at the quoted price whether shipment is accepted or not, and (ii) any work in process and any materials or supplies on hand or for which commitments have been made is to be paid for on the basis of Moleaer’s total cost plus thirty-five percent (35%).

9. FORCE MAJEURE. Neither Party shall be liable for any loss or damage of any nature whatsoever incurred or suffered as a result of any failures or delays in performance caused by strikes, lockouts or labor disputes, acts of God, epidemics, earthquakes, power failures or other disasters, riots, acts of civil or military authorities, acts of war or terrorism, compliance with laws, orders or policies of any governmental authority, delays in transit, delivery or communications facilities, failures of sources of materials or other events outside such Party’s reasonable control.

10. ASSIGNMENTS. This Contract shall not be assigned by Buyer without the prior written consent of Moleaer. Moleaer may assign this Contract to any affiliate or subsidiary of Moleaer or to a person or entity acquiring all or substantially all of the stock, assets or business of Moleaer.

11. COMPLIANCE. Buyer has full responsibility for obtaining any licenses, permits and inspections required for and for complying with all applicable laws, regulations, and ordinances in connection with the installation and use of the Goods. Without limiting the foregoing, Buyer shall comply with all applicable laws, regulations, and ordinances when using any hazardous gas, including but not limited to ozone, and shall be fully responsible for such compliance regardless of whether such gas is sourced from a third party provider or generated onsite by a gas generator or concentrator that is included in the Goods or acquired separately. Buyer shall take all necessary measures to ensure any hazardous gas is used in a safe manner consistent with industry best practices. Buyer acknowledges and agrees to follow and comply with the operating instructions provided by Moleaer and shall be fully responsible for the health and safety of Buyer’s employees, consultants, service providers and other representatives. Buyer shall ensure that any export of the Goods is made in accordance with all applicable export regulations, including the U.S. Department of Commerce’s Export Administration Regulations. Diversion or re-export contrary to U.S. law is prohibited. Buyer agrees that, in the performance of this Contract, neither it nor any of its officers, representatives or agents shall make, authorize, permit or offer any payments, loans, gifts or other value in violation of the laws or policies of the U.S.A. (including, but not limited to, the Foreign Corrupt Practices Act of 1977, as amended) or of any other country.

12. NOTICES. All notices required or permitted under this Contract and all requests for approvals, consents, and waivers must be in writing and delivered to the Parties at their respective addresses set forth on the Order by a method providing for proof of delivery. Any notice or request will be deemed to have been given on the date of receipt.

13. GOVERNING LAW AND JURISDICTION. This Contract shall be construed and enforced in accordance with the laws of the State of California, U.S.A., without reference to its conflict of laws principles. Any legal action or proceeding relating to this Contract shall be subject to the exclusive general jurisdiction of the courts of the State of California and the federal courts of the United States of America located in Los Angeles, California, and

the appellate courts thereof. This Contract shall not be governed by the U.N. Convention & Contracts for the International Sale of Goods, the application of which is expressly excluded.