

7) **Lake Elsinore Water Quality Plan, Agreements with Moleaer, Inc. and Solitude Lake Management, LLC, and Purchase of a Barge System from Poseidon Barge, LLC for Water Treatment of Lake Elsinore**

1. Approve and authorize the City Manager to execute an agreement with Moleaer, Inc., in an amount not to exceed \$1,690,797 for the purchase and service of water treatment equipment in such final form as approved by the City Attorney and authorize the City Manager to execute change orders not to exceed a 10% contingency amount of \$169,000 for uncertainties and adjustments;
2. Approve and authorize the City Manager to execute an agreement with Moleaer, Inc., in an amount not to exceed \$229,899 for water treatment equipment service, lake bottom hardness mapping, and water testing in such final form as approved by the City Attorney and authorize the City Manager to execute change orders not to exceed a 10% contingency amount of \$22,990 for uncertainties and adjustments;
3. Approve and authorize the City Manager to execute an agreement with Solitude Lake Management, LLC in an amount not to exceed \$347,194 for annual Lake maintenance in such final form as approved by the City Attorney and authorize the City Manager to execute change orders not to exceed a 10% contingency amount of \$34,719 for construction uncertainties, adjustments;

4. Authorize the City Manager to purchase a custom barge system from Poseidon Barge, LLC in an amount not to exceed \$226,085 for a custom barge system and to execute change orders not to exceed a 10% contingency amount of \$22,608.50 for uncertainties and adjustments; and
5. Waive the formal bidding process per Municipal Code Section 3.08.070(G) for the purchases from Moleaer, Inc. and Poseidon Barge, LLC since the systems are non-replicable and custom.



REPORT TO CITY COUNCIL

To: Honorable Mayor and Members of the City Council

From: Jason Simpson, City Manager

Prepared by: Adam Gufarotti, Community Support Manager

Date: August 22, 2023

Subject: Lake Elsinore Water Quality Plan, Agreements with Moleaer, Inc. and Solitude Lake Management, LLC, and Purchase of a Barge System from Poseidon Barge, LLC for Water Treatment of Lake Elsinore

Recommendation

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5. Waive the formal bidding process per Municipal Code Section 3.08.070(G) for the purchases from Moleaer, Inc. and Poseiden Barge, LLC since the systems are non-replicable and custom.

Background

As Southern California's largest freshwater lake, Lake Elsinore is a vital resource for both wildlife and recreation. Located at the bottom of the San Jacinto Watershed, the lake has a history of algae blooms and frequent water quality challenges. The San Jacinto River Watershed, upstream of Lake Elsinore, covers 780 square miles in the western half of Riverside County. It begins in the San Jacinto Mountains and runs west through Canyon Lake, ending in Lake Elsinore. The natural water flow through the San Jacinto Watershed carries nutrient-rich sediment into our lakes each year. The sediment carries high levels of nitrogen and phosphorus that contribute to water quality issues and threaten aquatic life in Lake Elsinore.

Discussion

The City along with its partners have implemented several water quality projects over the last twenty years. In 2008, the Lake Elsinore & San Jacinto Watershed Authority (LESJWA) installed the Lake Elsinore Aeration and Mixing System (LEAMS) project that aerates and mixes lake water to improve the oxygen levels. We have studied the fish population and worked to remove harmful fish like carp from the ecosystem. In the fall of 2022, the City conducted a pilot study to explore long-term solutions to improving the water of Lake Elsinore.

After reviewing the results of the pilot study and coordinating with our aquatic biologist, we are implementing a water quality plan for the next twenty years. This plan or road map approach is not one large project but several strategies to improve Lake Elsinore. This road map includes immediate and long-term water treatment projects that will work together to improve the lake. The first treatment plans are outlined below and will be implemented in the next three months.

Nanobubble Treatment

One of the most effective ways to improving lake water is to aerate or introduce oxygen into the water column. Nanobubbles are 2,500 times smaller than a single grain of salt and efficiently deliver oxygen. In addition to delivering oxygen, nanobubbles also prevent and mitigate algae blooms through their oxidative properties.

City staff has received a proposal from Moleaer Inc. to install one of their proprietary nanobubble generation systems to increase oxygen and reduce algae in the lake. This system will treat 7.2 million gallons a day. This system will not be able to treat the entire lake but will treat the area adjacent to the equipment. This initial system will allow us to plan for future water treatment projects. The proposal includes baseline water quality testing and hardness mapping of the lake bottom. This testing will allow us to track the effectiveness of the equipment and determine how many future systems are needed to treat the whole lake.

The equipment will be installed in a 40-foot shipping container on a floating barge approximately 50 feet off the shoreline. The system will use an oxygen concentrator to produce oxygen and ozone that will be injected into the nanobubbles. The barge will be installed on the East side of the lake between Mohr Street and Davis Street with underwater intake and discharge lines. The nanobubbles will eat up the muck (organic matter) at the bottom of the lake, which will improve the water quality. As the area around the treatment zone is cleaned, the treatment area will expand.

After considering multiple installation sites along the lake shore, a floating barge has been recommended due to its cost savings and flexibility for future development. City staff evaluated installation sites on the cost to provide power, the cost to install intake and discharge pipes, and community safety. City staff has received three proposals to procure a modular barge system. Below are the proposal results.

Contractor Name	Proposal Amount
Poseidon Barge, LLC	\$226,085
Robishaw Engineering, INC.	\$229,280
Shugart	Unresponsive Bidder

City staff has extensively reviewed Moleaer, conducted reference checks, and discussed the proposal with our biological scientists from WSP. WSP has reviewed the project and has submitted a letter of support (Attachment A). In 2021, Moleaer was contracted by the Los Angeles County Department of Public Works to clean up the Dominguez Channel in Carson, California, after the channel started to omit a strong odor of rotten eggs. The smell was determined to be hydrogen sulfide and linked to a warehouse fire adjacent to the channel. The fire caused the release of chemicals in the channel that consumed all

the available oxygen in the water. Moleaer installed their nanobubble generators along the channel and treated 60 million gallons daily, resolving the odors and restoring the water quality.

Algaecide

As part of our water treatment plan, a peroxide-based algaecide will be used to control Algae Blooms. This algaecide is approved for use in waters containing fish and adds 13% bio-available oxygen to the water. The algaecide is mixed with lake water on a boat and is spread right into the lake. The contractor will start with small dosages of the algaecide and increase as needed depending on the growth of the algae. Peroxide based algaecides are safe for humans and pets. The algaecide will break down to sodium carbonate and hydrogen peroxide in water and sodium carbonate peroxyhydrate will not stay in the sediment layer or water.

Phosphorus Treatment

Phosphorus enters the water from run-off, or internally, from the nutrient-rich sediments on the bottom of the lake. Too much phosphorus can cause increased growth of algae, which can result in decreased levels of dissolved oxygen a process called eutrophication. High levels of phosphorus can also lead to algae blooms that produce algal toxins, that can harm human and animal health.

Canyon Lake currently uses Alum treatments to reduce its Phosphorus levels. Alum is not recommended for Lake Elsinore because the Ph of Lake Elsinore is higher than the recommended levels for Alum. Lanthum-based chemicals work the same way as Alum by removing the phosphorus from the water column and trapping it in the bottom sediment layer.

The City has received two proposals for algaecide and phosphorus treatments for Lake Elsinore. It is recommended to award a contract to Solitude Lake Management, LLC, for the treatment of Lake Elsinore.

Solitude Lake Management, LLC	\$347,194
Aquatechnex	\$419,555

City staff anticipates the Algaecide and Phosphorus treatments to start in September 2023, and the nanobubble equipment installed in the next three months. Regular updates on the status of these new projects will be included in our Lake Watch updates.

Future Projects

The City's roadmap approach to managing the lake includes long-term projects currently in the planning phase of development. The City has been working with the Army Corps of Engineers on a wetland restoration project that will help to filter the lake water and restore the natural habitat around the lake. This project is planned for the inlet channel that receives water from Canyon Lake and the outflow channel near Elm Grove Beach.

The City was recently awarded 1.5 million for a 2-year pilot project to install an algae harvester that will filter lake water, separate the algae, and return clean water to the lake. This project is planned to be installed on the north end of the lake but is still in the planning stage.

In 2008, the City and its regional partners installed the Lake Elsinore Aeration and Mixing System that you can see floating in the middle of the lake. This equipment is over 15 years old and has reached its useful life expectancy. The Lake Elsinore and San Jacinto Watershed Authority (LESJWA) is in the planning stage to replace this equipment.

Fiscal Impact

Funding costs are included in the Fiscal Year 2023/2024 Measure Z Budget.

Attachments

Attachment 1 - WSP Letter of Support

Attachment 2 – Agreement with Moleaer, Inc. for water treatment equipment

Attachment 3 – Agreement with Moleaer, Inc. for equipment service, lake bottom hardness mapping, and water testing

Attachment 4 - Agreement with Solitude Lake Management, LLC

Attachment 5 – Poseidon, LLC Proposal



August 14, 2023

City of Lake Elsinore
130 South Main St.
Lake Elsinore, CA 92530

Attention: Mr. Adam Gufarotti

Subject: Moleaer Nanobubble Technology Assessment Letter

Dear Mr. Gufarotti,

We have reviewed the proposal, product material, and case studies provided by Moleaer Advanced Nanobubble Technology (Moleaer) and are glad to offer our thoughts on its viability for Lake Elsinore as summarized below.

Lake Elsinore has been plagued by chronic cyanobacteria algal blooms resulting from excess nutrients nitrogen and phosphorus, primarily as a result of internal sediment nutrient recycling. Not only do these blooms release toxins that are harmful to humans, the high algal biomass in the lake causes regular periods of very low dissolved oxygen leading to occasional fish kills. These low oxygen conditions near the bottom of the lake also facilitate the flux of phosphorus from the sediment, thereby continuing and exacerbating the cycle.

The Moleaer technology produces nanobubbles 70-120 nanometers (nm) in size, 2500 times smaller than a grain of salt, that possess special properties due to their size that allow them to stay in solution and react with organic particles in unique ways. Research over the past decade has shown that nanobubbles can have a positive influence on water quality in applications such as wastewater treatment, groundwater remediation, sludge treatment, and surface water improvement given the right environmental conditions^{1,2,3,4}. Moleaer also participated in the Lake Elsinore Algal Biomass Reduction Pilot Study performed in Lake Elsinore in the Fall of 2022. A smaller unit supplied with ambient air only was used for this pilot study inside an enclosed mesocosm. This study found that the Moleaer unit was successful at increasing dissolved oxygen and lowering turbidity within the enclosure relative to that observed in the lake outside the enclosures. Nutrient and algae concentrations however remained relatively similar within and outside the enclosure during this pilot study. Algae bloom conditions were extreme during the pilot study increasing the challenge for any technology, and the Moleaer unit was only injecting ambient air as opposed to ozone or oxygen at this time.

Nanobubbles have been shown to improve water quality in surface waters degraded by cyanobacterial algal blooms through several means. Due to their high surface to volume ratio nanobubbles are much more efficient at increasing dissolved oxygen concentrations in the water. This not only benefits the aquatic organisms due to higher dissolved oxygen levels in the water column, but also serves to increase oxygen near the bottom decreasing the flux of phosphorus from the sediment. Nanobubbles can also reduce algal bloom cell densities by oxidizing (lysing) the cell membrane of the algae. This oxidation can be somewhat effective when ambient air nanobubbles are used but is more so when ozone nanobubbles are used.

¹ [NCCOS Validates Nanobubble Technology for Remediation of Harmful Freshwater Algal Blooms - NCCOS Coastal Science Website \(noaa.gov\)](https://www.noaa.gov)

² [Fundamentals and applications of nanobubbles: A review - ScienceDirect](https://www.sciencedirect.com)

³ [Applications of micro-nano bubble technology in environmental pollution control - Xiao - 2019 - Micro & Nano Letters - Wiley Online Library](https://www.sciencedirect.com)

⁴ [Nanobubble Technologies Offer Opportunities To Improve Water Treatment | Accounts of Chemical Research \(acs.org\)](https://www.acs.org)

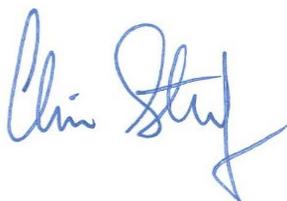
Moleaer proposes to implement two containerized ozone nanobubble generating systems pumping a combined 5,000 gallons per minute to the eastern shore of Lake Elsinore just north of Elm Grove Beach. This system is claimed to deliver 1 kilogram of ozone per hour of operation and treat an approximately 70-acre area of the lake. They also propose to monitor the area of the lake being treated with several buoy data loggers, both prior to and during nanobubble generation, to quantify the impact of the nanobubbles on lake water quality, in addition to mapping potential changes in sediment hardness (i.e., bottom sludge).

Given the recent research and advances in nanobubble technology, the system that Moleaer is proposing for use in Lake Elsinore appears promising with several caveats. Moleaer does note in their proposal that this system is intended to provide “localized” treatment, meaning that for any improvements in water quality or sediment hardness observed, it will likely be limited to the area of nanobubble discharge. From what we know, these types of nanobubble treatment systems have not been utilized on a lake as large as Lake Elsinore, and having a cyanobacterial bloom as dense and chronic as Lake Elsinore. It is possible that given the size of Lake Elsinore, the lake mixing pattern due to frequent high afternoon winds, and known potential for exponential growth of cyanobacteria, that the effectiveness of the nanobubbles may be muted. It will be important to have independent review of the water quality data gathered from the lake during operation of the Moleaer units to determine their effectiveness.

We recognize the demonstrated potential that nanobubbles have to improve water and sediment quality in Lake Elsinore and also the challenges given the size and unique geographic and environmental conditions of the lake. We support the proposed study which we believe has been well thought out with a solid plan to demonstrate effectiveness through monitoring. The project will provide valuable data on the capability of the Moleaer nanobubble technology and its potential for scaling up to more lake-wide use. We also recognize that no single technology even if effective and scaled up, will provide the “magic bullet” that will solely rid Lake Elsinore of algal bloom issues. Based on prior demonstrations and ultimate results of this study we believe the Moleaer technology could play a significant role in a multi-pronged approach that will be needed to sustain the lake in an ecologically healthy condition.

If you have any questions, please contact me at your convenience. We look forward to continuing our work with the City of Lake Elsinore on these important projects.

Sincerely,



Chris Stransky, M.S.
Aquatic Sciences Group Manager
WSP USA, Inc.



John Rudolph, M.S.
Senior Aquatic Biologist
WSP USA, Inc.

AGREEMENT FOR PROFESSIONAL SERVICES

Moleaer, Inc.

Water Treatment Equipment Purchase and Service

This Agreement for Professional Services (the "Agreement") is made and entered into as of August __, 2023, by and between the City of Lake Elsinore, a municipal corporation ("City") and Moleaer, Inc., a Water Treatment Firm ("Consultant").

RECITALS

A. The City has determined that it requires the following professional services:

Water Treatment of Lake Elsinore

B. Consultant has submitted to City a proposal, dated August 15, 2023, attached hereto as Exhibit A ("Consultant's Proposal") and incorporated herein, to provide professional services to City pursuant to the terms of this Agreement.

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

D. City desires to retain Consultant to perform the services as provided herein and Consultant desires to provide such professional 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 completion of the professional 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 services pursuant to this Agreement upon receipt of a written notice to proceed and shall 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 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 Six Hundred and Ninety Thousand and Seven Hundred and Ninety Seven dollars (1,690,797) 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 Nanobubble Technology Firm

City Manager

By: Click or tap here to enter text.

Its: Click or tap here to enter text.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Assistant City Manager

Attachments: Exhibit A – Consultant’s Proposal
Exhibit B – List of Subcontractors

CONFIDENTIAL



August 2023

www.Moleaer.com

MOLEAER[®]

ADVANCING NANOBUBBLE TECHNOLOGY

Lake Elsinore Nanobubble Treatment



Lake Elsinore, City of Lake Elsinore, CA

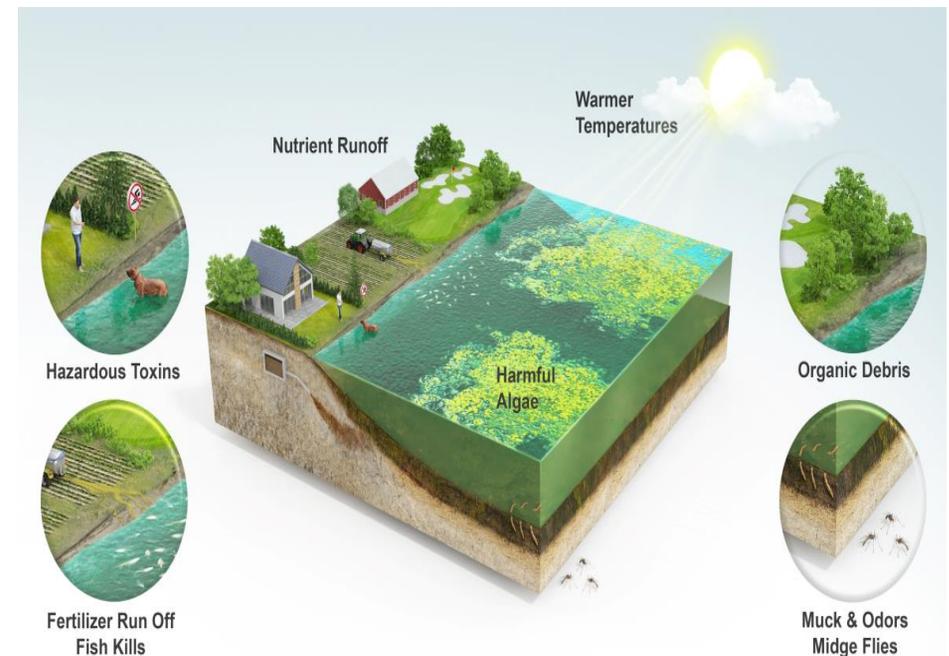


Surface Acres: 3,000

Lake Elsinore NB Treatment Strategy

Problems:

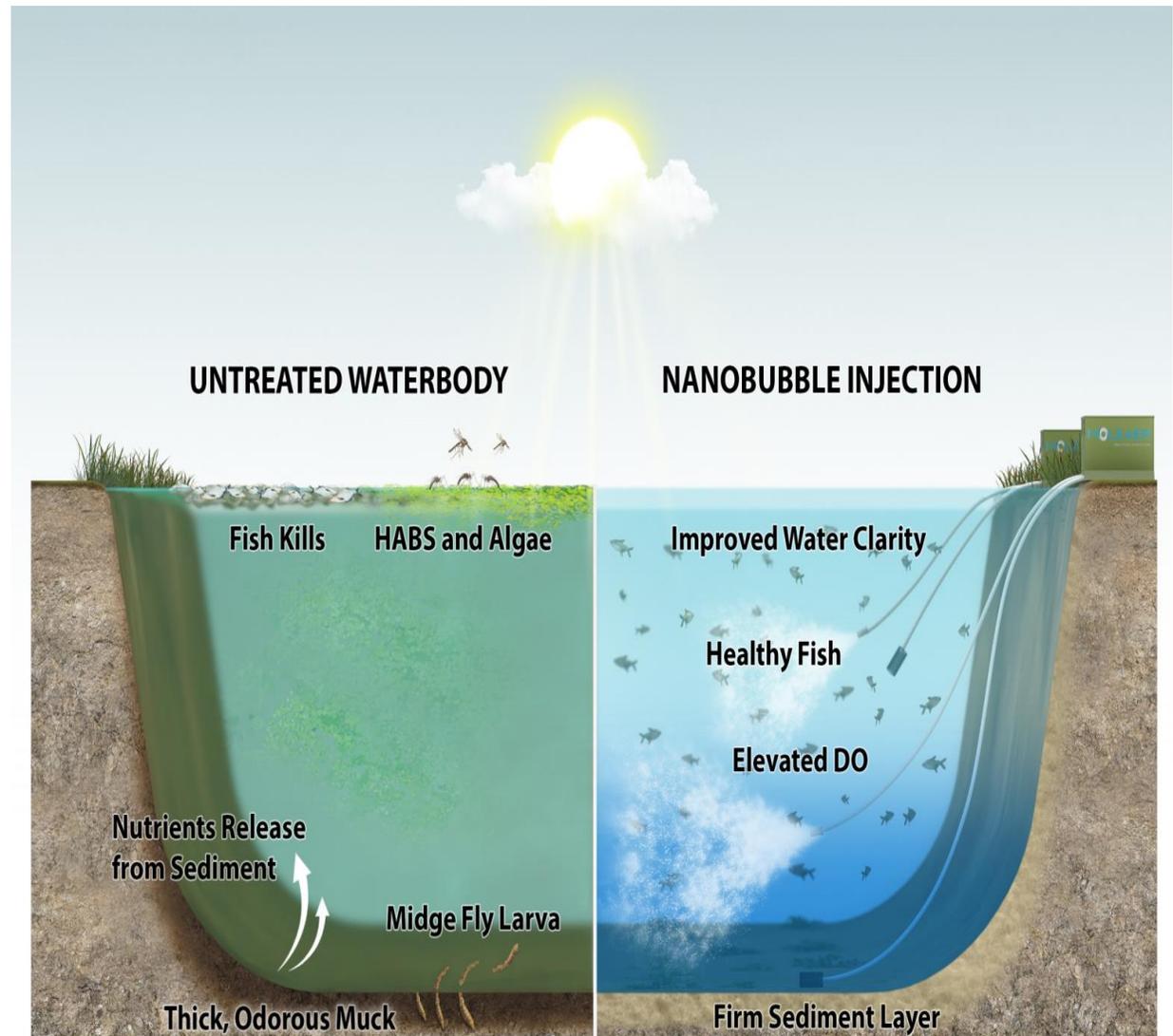
- ❖ Excessive muck and nutrients
- ❖ Internal phosphorus cycling that leads to algae blooms and associated toxins
- ❖ Poor water quality limits or severely diminishes the recreational use and fishing
- ❖ Poor water quality and limitations on lake use negatively impacts property values, tourism and growth potential



Lake Elsinore NB Treatment Strategy

Solution:

- Utilize O₂/O₃ nanobubbles to:
- ✓ Treat root cause of water quality problems
- ✓ Address and mitigate current algae concentrations



Lake Elsinore, City of Lake Elsinore, CA

Strategy Details



Utilize high capacity O2 O3 Nanobubble Generator system to provide restorative treatment and to address current challenges in a localized area.



Establish baseline data, progress monitoring and sampling to gauge effectiveness, based on a robust data set



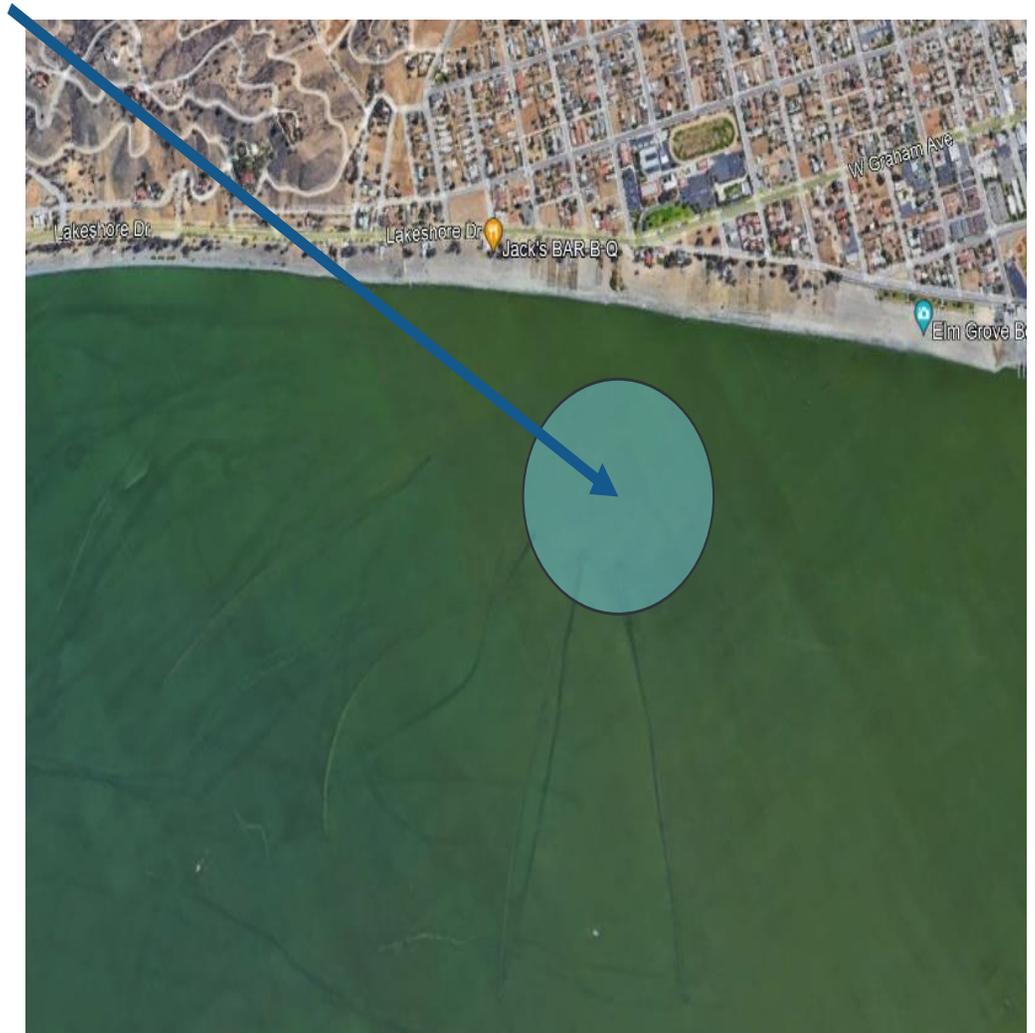
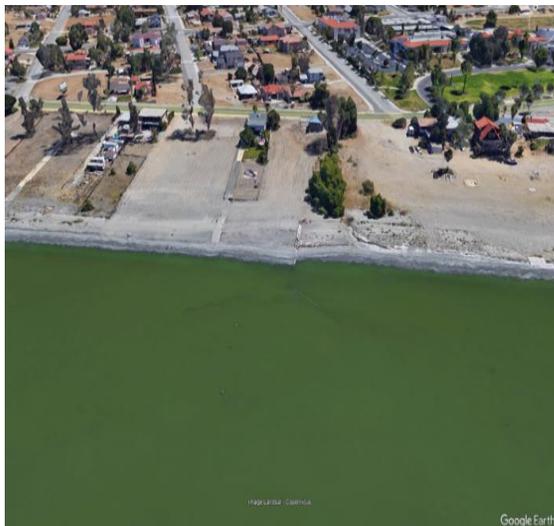
Utilize data to guide decisions for expanded localized and/or whole lake treatment



Improve water quality in the localized area for public benefit

Lake Elsinore, City of Lake Elsinore, CA

Location of Nanobubble Generator system



Lake Elsinore NB Treatment Strategy

2. Containerized Solution Examples:



Lake Elsinore NB Treatment Strategy

2. Containerized Solution Examples:

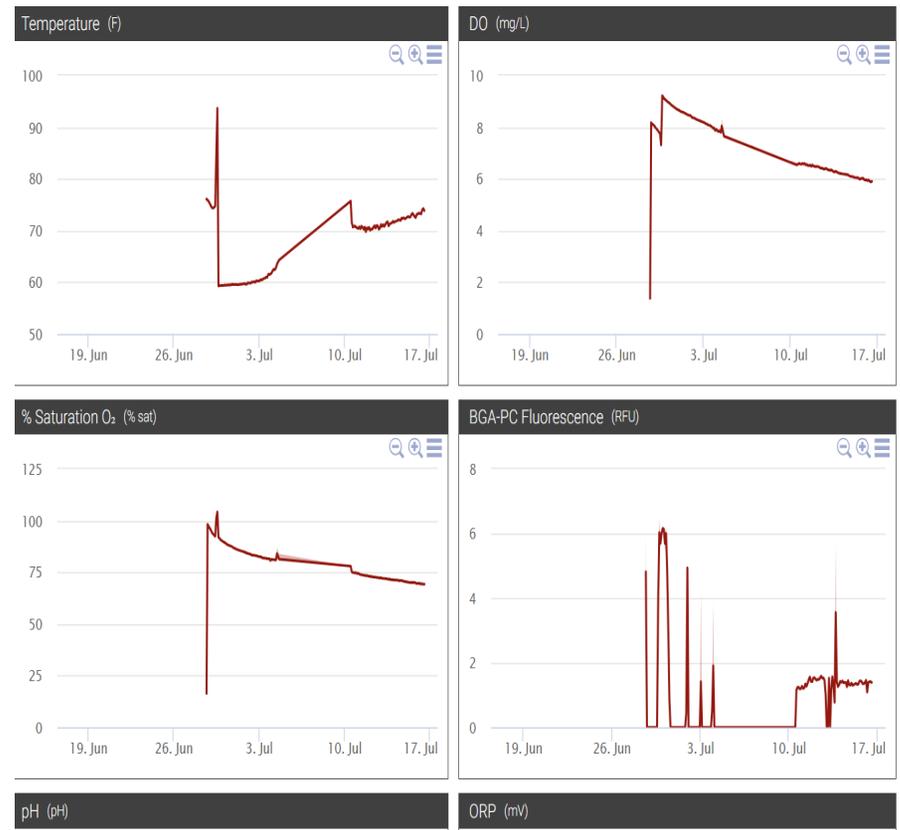


Lake Elsinore NB Treatment Strategy

1. Measure:

- Establish baseline water quality parameters to allow comparison and quantification of treatment.
- Use in situ water quality monitoring buoys/sondes for 24/7 in water quality parameter monitoring.
 - Monitor EC, pH, DO, ORP, temp, BGA-PC and chlorophyll-A.
 - At least 1 month of baseline data
 - Utilize 5 buoy/sondes to capture water quality in WW effluent pipe or channel, around treatment site and outside treatment area
 - Combine with monitoring and information collected prior to NB deployment
 - Moleaer to provide monthly report

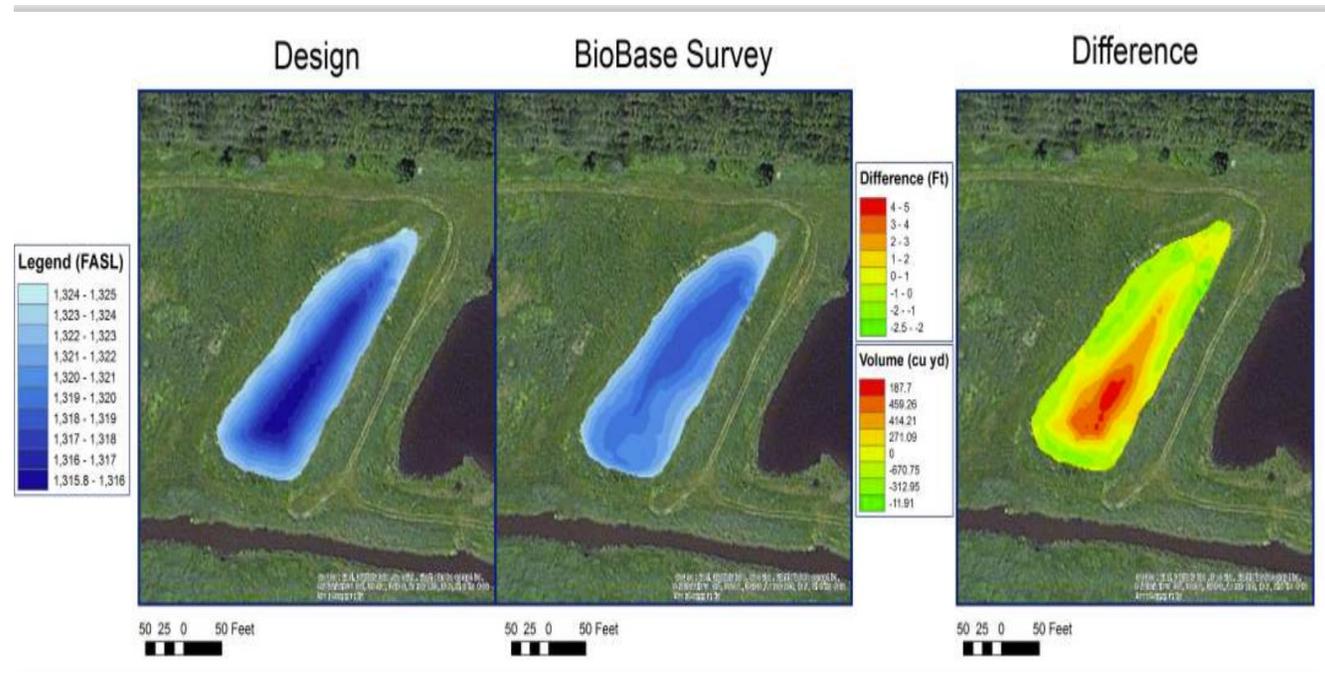
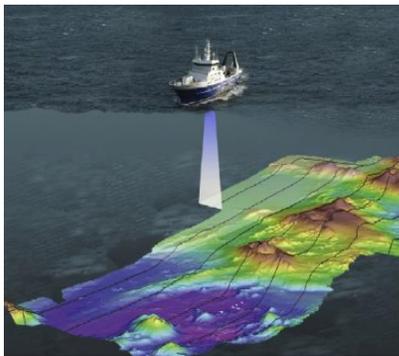
[Monitoring Harmful Algal Blooms - HAB](#)
[Monitoring Equipment \(in-situ.com\)](#)



Lake Elsinore NB Treatment Strategy

1. Measure: (Cont'd)

- Sediment hardness map the entire lake
 - Map and understand soft (organic =digestible) vs. hard bottom (inorganic =nondigestible)
 - Repeat mapping to quantify the difference.



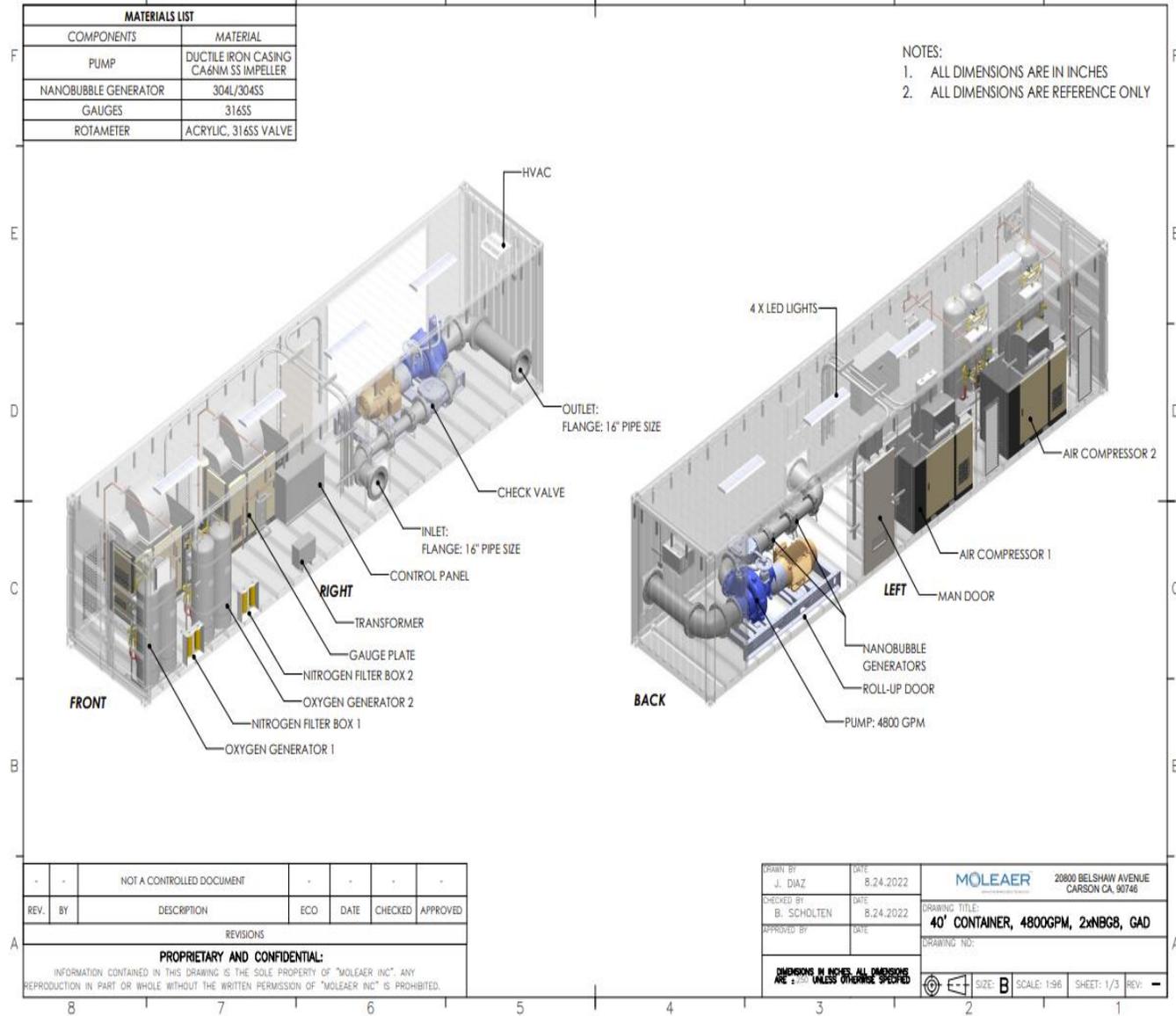
Lake Elsinore NB Treatment Strategy

2. Plan and Prepare:

- Draft and execute agreements/PO/Vendor setup
- General arrangement drawing (GAD) and electrical requirements to be delivered within 1 week of order
- 60 day timeline from agreement to beginning of installation
- Establish working group for project management (Moleaer, CLE, engineers and contractors)
- Upon container delivery, 2 week preliminary timeline for installation
- CLE to contract and/or perform any required site work
- CLE to contract power installation. 3ph 460V 225A (preliminary
- Moleaer to plan and work with associated parties for installation

Lake Elsinore NB Treatment Strategy

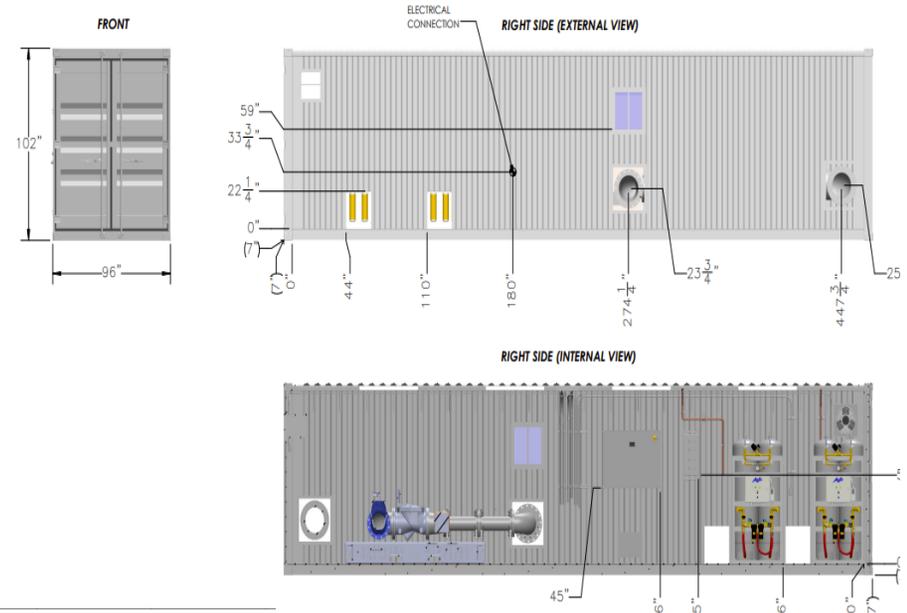
2. Containerized Solution Examples of Drawings Provided



Lake Elsinore NB Treatment Strategy

2. Containerized Solution Examples of Drawings Provided

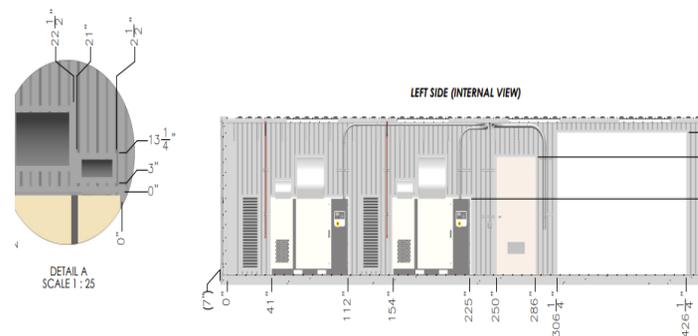
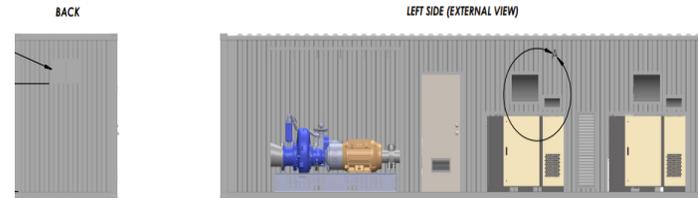
NOTES:
1. ALL DIMENSIONS ARE IN INCHES
2. ALL DIMENSIONS ARE REFERENCE



NOTES:
1. ALL DIMENSIONS ARE IN INCHES
2. ALL DIMENSIONS ARE REFERENCE

DESIGNED BY	DATE	APPROVED

DESIGNED BY	DATE	MOLEAER	20800 BELSHAW / CARSON CA, 9
CHECKED BY	DATE		
APPROVED BY	DATE		
DRAWING TITLE:			40' CONTAINER, 4800GPM, 2xNBGS
DRAWING NO.:			



CONTROLLED DOCUMENT	-	-	-	-
DESCRIPTION	ECO	DATE	CHECKED	APPROVED
REVISIONS				
PROPRIETARY AND CONFIDENTIAL:				
1. IN THIS DRAWING IS THE SOLE PROPERTY OF "MOLEAER INC." ANY USE WITHOUT THE WRITTEN PERMISSION OF "MOLEAER INC." IS PROHIBITED.				

DESIGNED BY	DATE	MOLEAER	
CHECKED BY	DATE		
APPROVED BY	DATE		
DRAWING TITLE:			40' CONTAINER, 4800GPM
DRAWING NO.:			
DRAWING SCALE:			SCALE: 1:9

Lake Elsinore NB Treatment Strategy

3. Treat:

- Moleaer to provide installation of Containerized NB system and associated piping
- CLE to contract, provide and connect 3ph 460V power at container location
- Localized treatment approach, while contributing to whole lake treatment
- Allow the city to demonstrate success in providing localized, at scale treatment, while using data collection to best guide sizing for whole lake or targeted lake treatment, utilizing all available tools, where appropriate.

Lake Elsinore NB Treatment Strategy

4. Monitor: Develop robust data set to quantify impact and make decisions for additional NB treatment capacity or complimentary treatments

- Lake: Monitor temperature, EC, pH/ORP, DO, turbidity, chlorophyll-a and Phycocyanin-BGA-PC
 - Monitor and understand diurnal changes and trends.
 - At least 1 month of baseline data
 - Utilize 5 buoy/sondes to capture water quality at effluent/lake discharge, around treatment area and at untreated part of the lake
 - Map and understand soft (organic and digestible) vs. hard bottom (inorganic and nondigestible) to establish baseline.
- Lake: Repeat sediment hardness mapping of treated area every 6 months to quantify the difference. (Initial, 6 mo and 12 month mapping are included)
- System: Moleaer nanobubble system has remote monitoring of pumping, O2 and O3 systems to ensure optimal performance, alert for any system issues.
- Safety: Ambient O3 monitors to ensure public and employee safety

Lake Elsinore NB Treatment Strategy

5. Maintain: Moleaer and associated vendor partners to provide maintenance on NB system components to provide exceptional uptime and treatment capacity

- Daily Monitoring of system performance and water quality reporting
- Monthly site visits by Moleaer to perform CIP (Clean in Place) of equipment, perform required sonde/probe maintenance, service components and clean intake screens, if/as needed.
- Quarterly and annual site visits to perform required maintenance
- 24/7 alerts/alarms to notify of system performance issues

Lake Elsinore NB Treatment: System Details

- (1) 40' High Cube, Open-Side Shipping Container. HVAC, interior and exterior lights, lockable
- (2) NBG6 Nanobubble Generators, 304 SS in series.
- (1) 50 hp Gorman Rupp T10 Self-Priming Pump and Variable Frequency Drive
- (1) 15 hp Ingersoll Rand Compressor with Integrated Air Drier (R11i TAS)
- (1) AirSep AS-G Oxygen Concentrator, 250-320 SCFH of Oxygen at 45-65 psig, up to 95% concentration.
220V, 50/60 Hz
- (1) Pinnacle Summit™ Model P10V-5 Ozone Generator Platform w/step down transformer, 57 ppd ozone at 9% concentration with 0-100% turn-down capability to achieve lower doses.
- (1) Pinnacle Model: 1370-7400-051, Chiller Assembly
- (2) Ambient ozone safety monitors
- (2) in-line ORP monitors
- (1) Water intrusion system monitoring to aid in mitigating water damage
- (1) Telemetry/Remote monitoring of system performance
- (5) In situ water quality monitoring buoy, 6 parameter
- (2) Self Cleaning high capacity suction screens for intake pipe, T type. Reduced intake velocity and small screen surface to protect aquatic life and nanobubble generator system

Preliminary estimated weight of container: 30,000#

Lake Elsinore NB Treatment: Scope of Work

Moleaer is to provide:

- **Nanobubble system, as described**
- **In Situ monitoring sondes/buoys, as described**
- **Unloading and setting of container. CLE to provide level, compacted gravel pad for crane**
- **On site commissioning and optimizing of nanobubble system**
- **Operation and daily check training of city staff**
- **Monthly, quarterly and annual maintenance of nanobubble generator system and monitoring buoys for 1 years**
- **Monthly and annual reports from monitoring buoys with analysis**
- **Sediment hardness mapping. 3 mapping events. Initial, 6 and 12 month.**

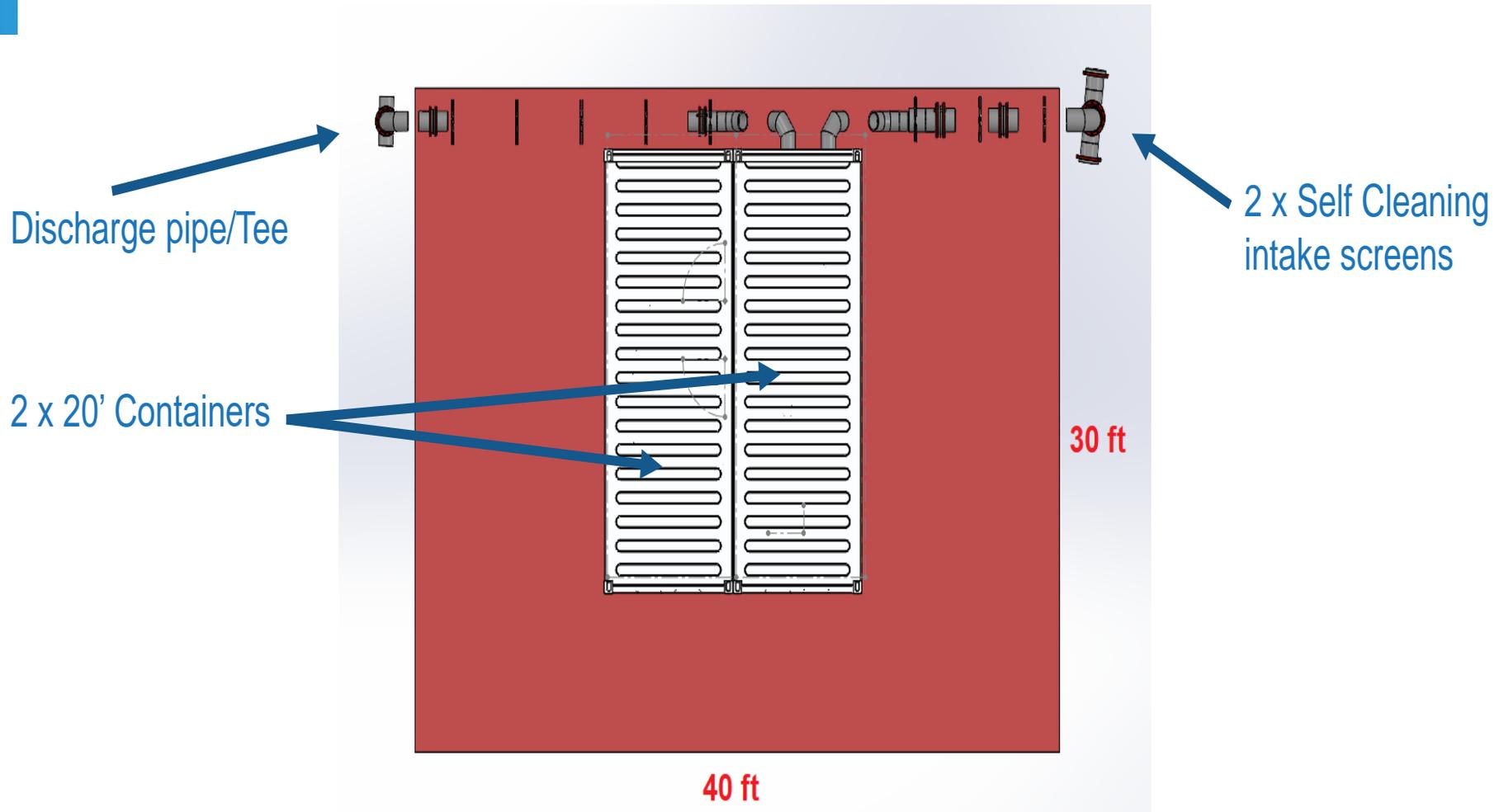
Lake Elsinore NB Treatment: Scope of Work

City of Lake Elsinore is to provide:

- All permissions, permits and access for installation, use and maintenance of the NB system.
- Required site work required to provide a compacted gravel pad suitable for a crane to set a 40' high cube container within 50' of shore.
- Suitable signs, warnings and barriers to restrict access of container, piping, intake and discharge piping
- Supply and connection of 3ph 460V 225A power to container primary power panel.
- Daily visual check on container and piping for damage, vandalism and/or water leaks. Reporting to Moleaer of any issues.
- Cost to repair system due to damage, vandalism or theft

Lake Elsinore NB Treatment:

Proposed Container layout on barge



Lake Elsinore NB Treatment:

Purchase, install, monitoring with 1 yr. service plan

PRICING SUMMARY			
	First Year	#/yrs	Total
Container-Cap Ex			\$1,139,173
Container-Install			\$310,855
Container- Service	240,769	1	\$240,769
Total + 1 Year Service			\$1,690,797
Year 2 Service + Mapping & Water Testing		1	\$229,899
Total for cap ex, install, and 2 years of service			\$1,920,696

Thank You



www.moleaer.com

AGREEMENT FOR PROFESSIONAL SERVICES

Moleaer, Inc.

Water Treatment Equipment Service, Lake Bottom Hardness Mapping, and Water Testing

This Agreement for Professional Services (the "Agreement") is made and entered into as of August __, 2023, by and between the City of Lake Elsinore, a municipal corporation ("City") and Moleaer, Inc., a Water Treatment Firm ("Consultant").

RECITALS

A. The City has determined that it requires the following professional services:

Equipment Service, Lake Bottom Hardness Mapping and Water Testing

B. Consultant has submitted to City a proposal, dated August 15, 2023, attached hereto as Exhibit A ("Consultant's Proposal") and incorporated herein, to provide professional services to City pursuant to the terms of this Agreement.

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

D. City desires to retain Consultant to perform the services as provided herein and Consultant desires to provide such professional 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 completion of the professional 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 services pursuant to this Agreement upon receipt of a written notice to proceed and shall 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 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 Two Hundred and Twenty Nine Thousand and Eight Hundred and Ninety Nine dollars (229,899) 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.

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 Nanobubble Technology Firm

City Manager

By: Click or tap here to enter text.

Its: Click or tap here to enter text.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Assistant City Manager

Attachments: Exhibit A – Consultant’s Proposal
Exhibit B – List of Subcontractors

CONFIDENTIAL



August 2023

www.Moleaer.com

MOLEAER®

ADVANCING NANOBUBBLE TECHNOLOGY

Lake Elsinore Nanobubble Treatment



Lake Elsinore, City of Lake Elsinore, CA

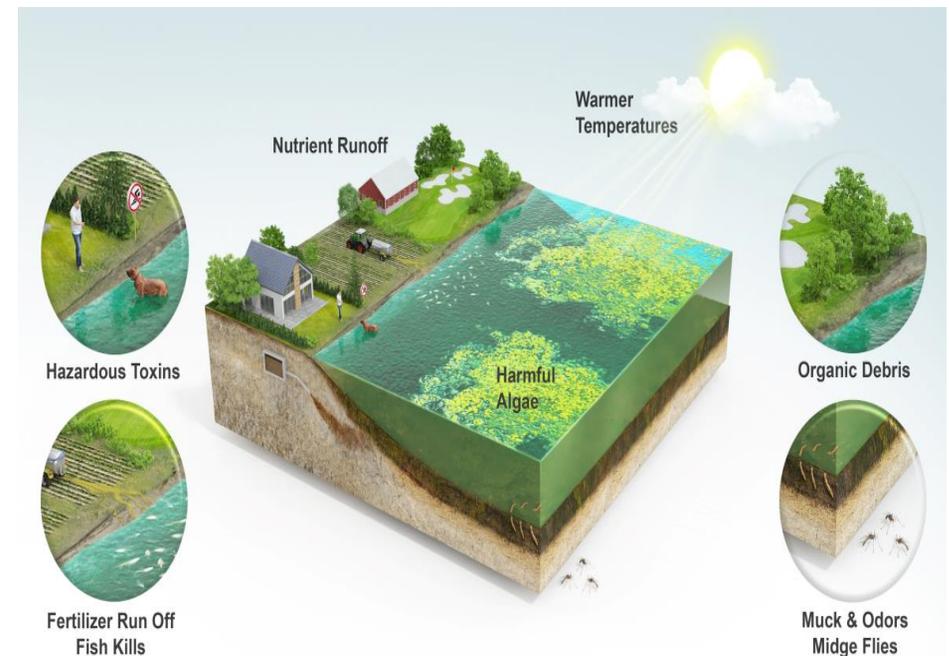


Surface Acres: 3,000

Lake Elsinore NB Treatment Strategy

Problems:

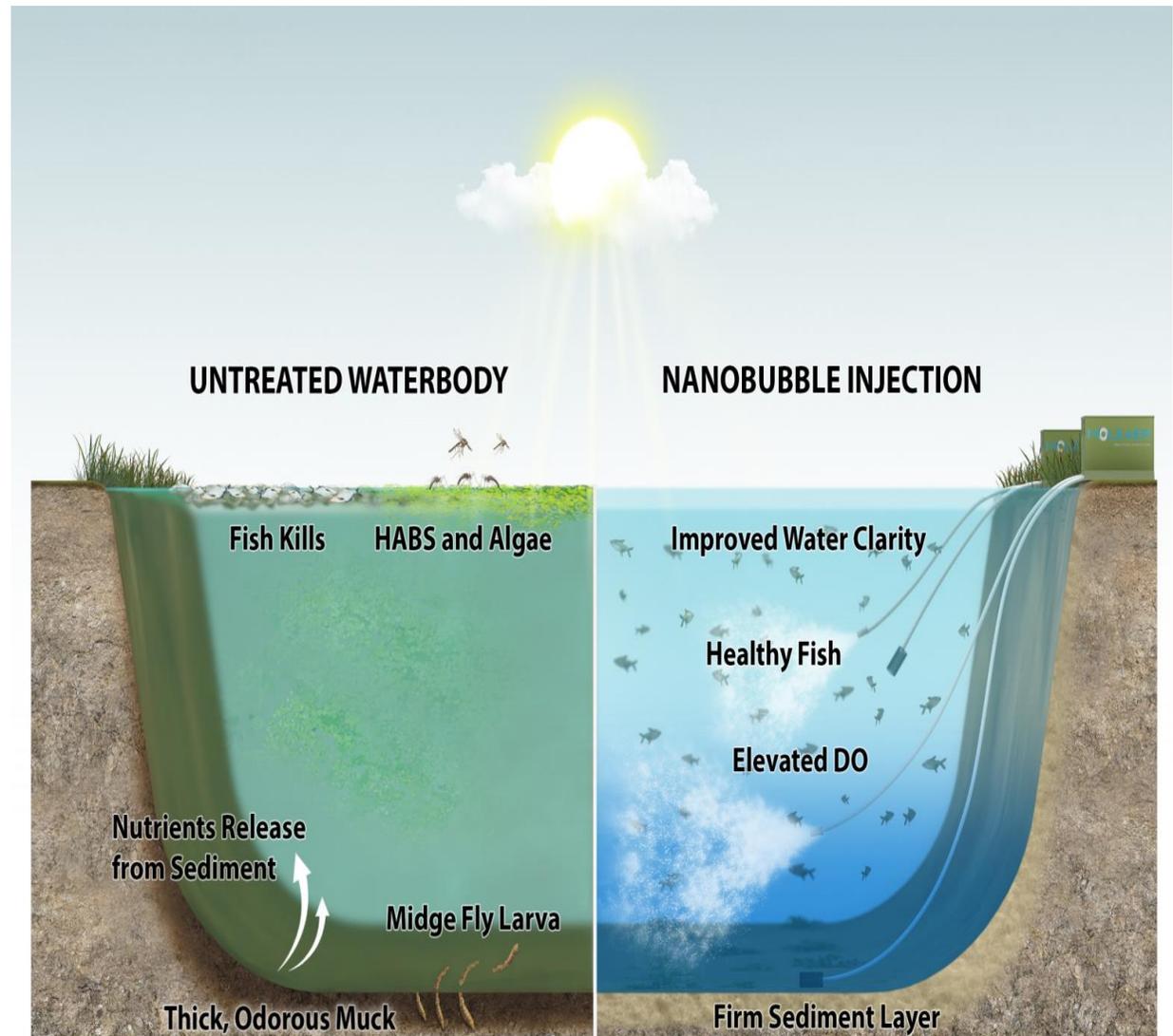
- ❖ Excessive muck and nutrients
- ❖ Internal phosphorus cycling that leads to algae blooms and associated toxins
- ❖ Poor water quality limits or severely diminishes the recreational use and fishing
- ❖ Poor water quality and limitations on lake use negatively impacts property values, tourism and growth potential



Lake Elsinore NB Treatment Strategy

Solution:

- Utilize O₂/O₃ nanobubbles to:
- ✓ Treat root cause of water quality problems
- ✓ Address and mitigate current algae concentrations



Lake Elsinore, City of Lake Elsinore, CA

Strategy Details



Utilize high capacity O2 O3 Nanobubble Generator system to provide restorative treatment and to address current challenges in a localized area.



Establish baseline data, progress monitoring and sampling to gauge effectiveness, based on a robust data set



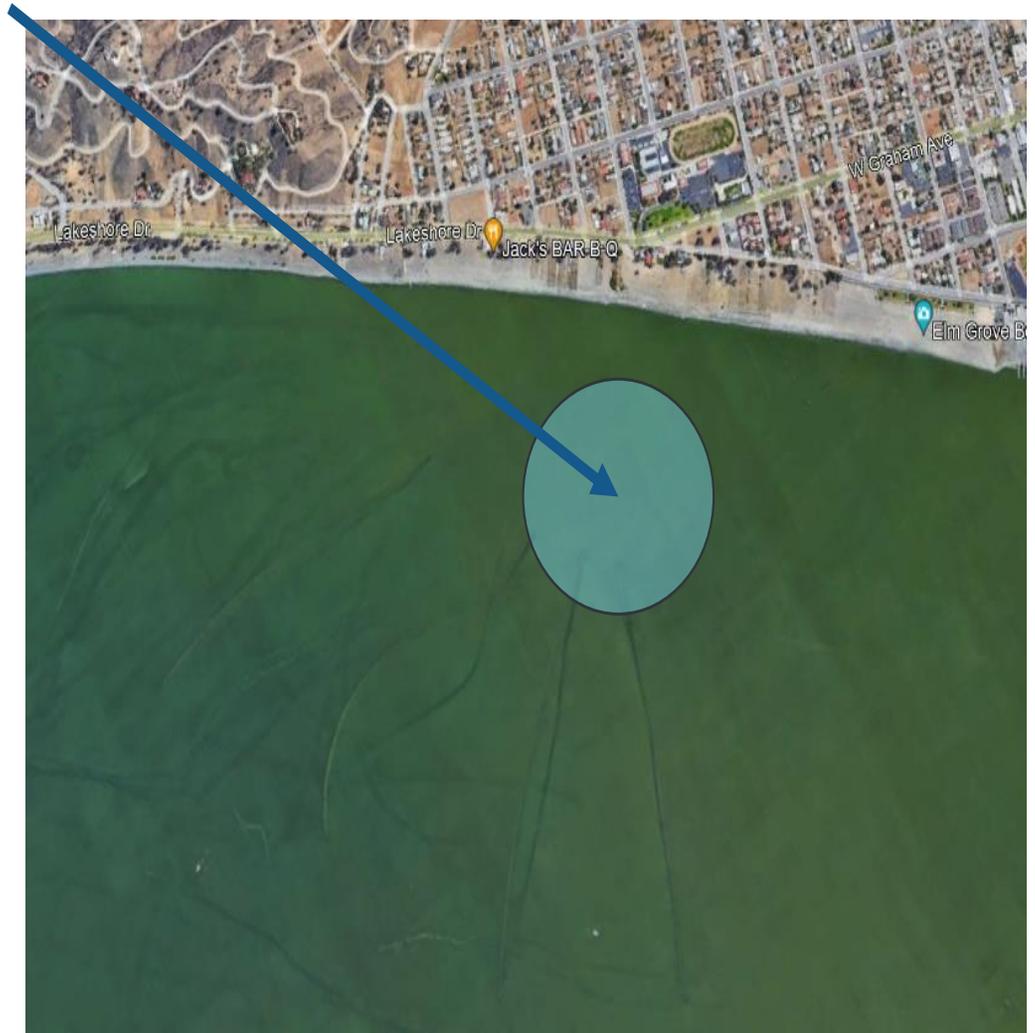
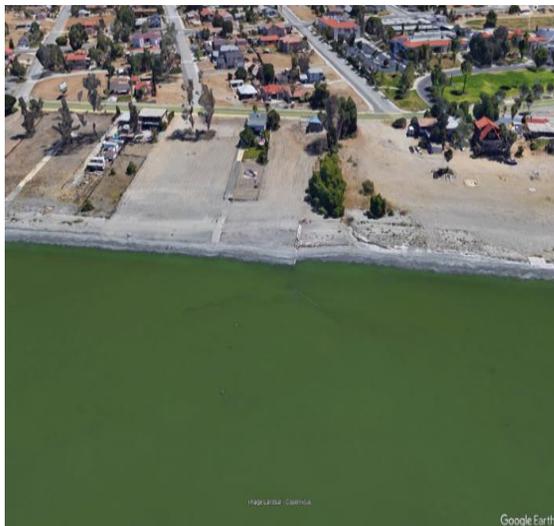
Utilize data to guide decisions for expanded localized and/or whole lake treatment



Improve water quality in the localized area for public benefit

Lake Elsinore, City of Lake Elsinore, CA

Location of Nanobubble Generator system



Lake Elsinore NB Treatment Strategy

2. Containerized Solution Examples:



Lake Elsinore NB Treatment Strategy

2. Containerized Solution Examples:

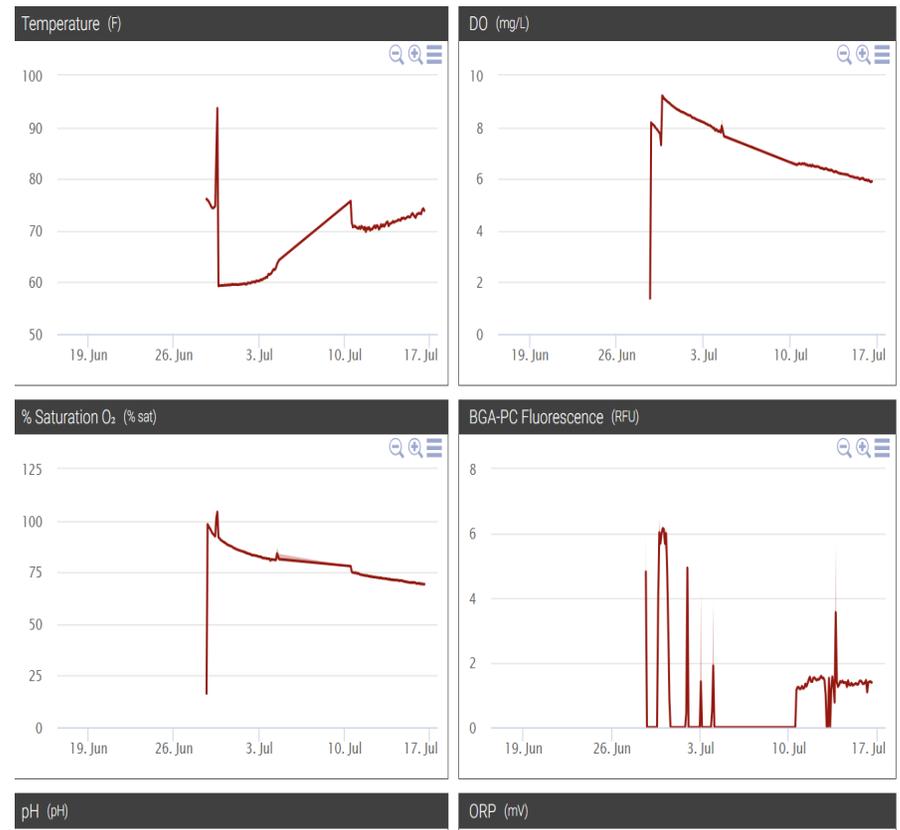


Lake Elsinore NB Treatment Strategy

1. Measure:

- Establish baseline water quality parameters to allow comparison and quantification of treatment.
- Use in situ water quality monitoring buoys/sondes for 24/7 in water quality parameter monitoring.
 - Monitor EC, pH, DO, ORP, temp, BGA-PC and chlorophyll-A.
 - At least 1 month of baseline data
 - Utilize 5 buoy/sondes to capture water quality in WW effluent pipe or channel, around treatment site and outside treatment area
 - Combine with monitoring and information collected prior to NB deployment
 - Moleaer to provide monthly report

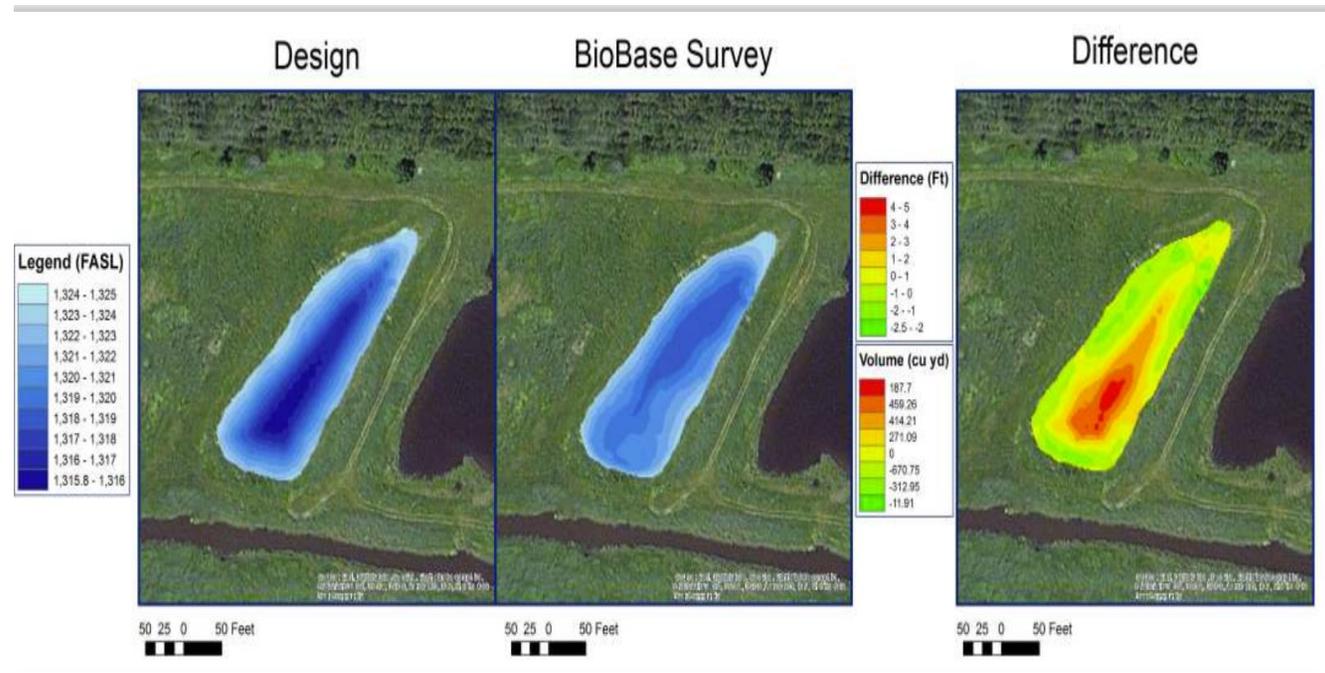
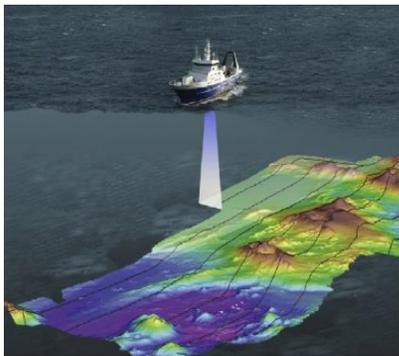
[Monitoring Harmful Algal Blooms - HAB](#)
[Monitoring Equipment \(in-situ.com\)](#)



Lake Elsinore NB Treatment Strategy

1. Measure: (Cont'd)

- Sediment hardness map the entire lake
 - Map and understand soft (organic =digestible) vs. hard bottom (inorganic =nondigestible)
 - Repeat mapping to quantify the difference.



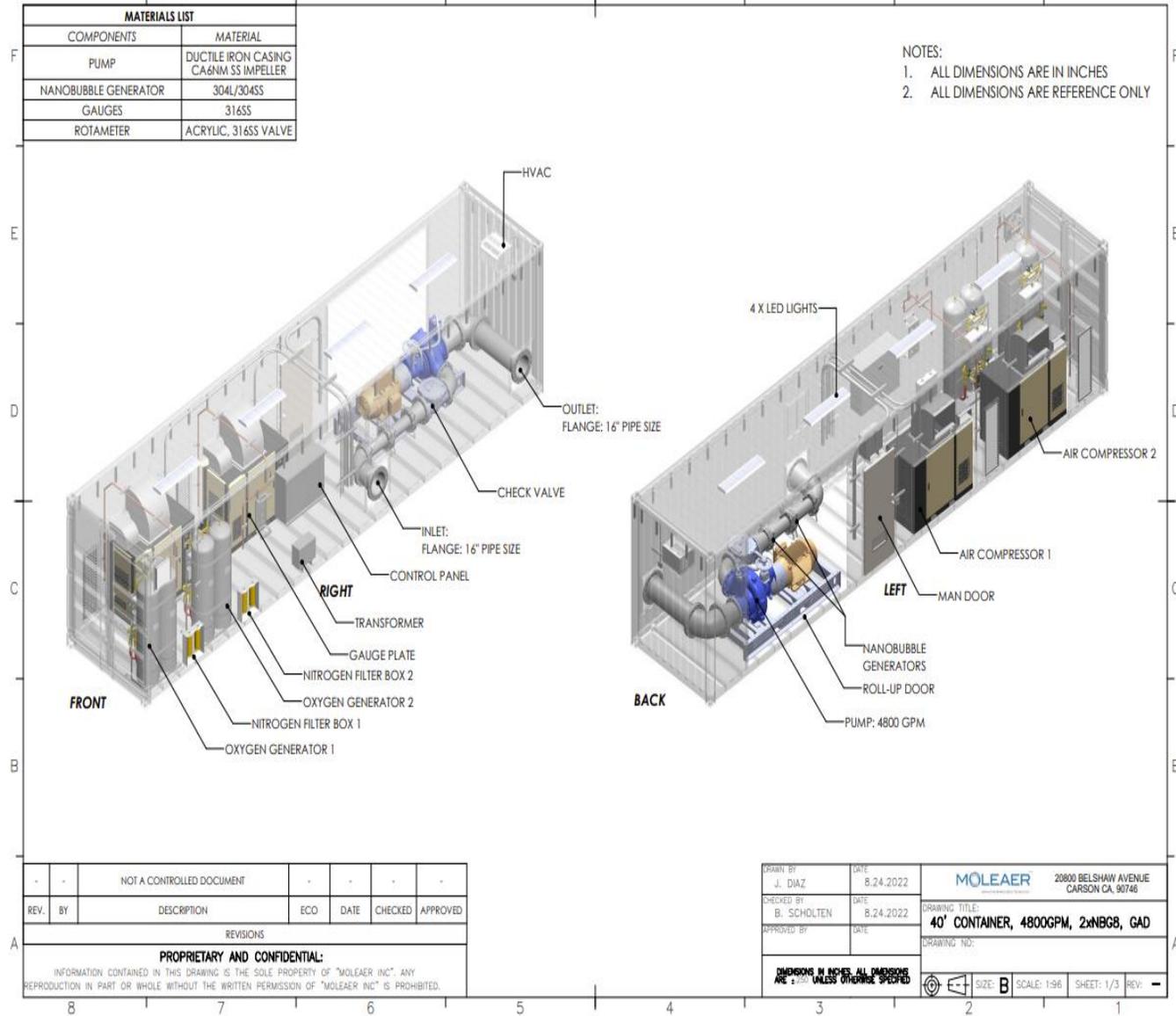
Lake Elsinore NB Treatment Strategy

2. Plan and Prepare:

- Draft and execute agreements/PO/Vendor setup
- General arrangement drawing (GAD) and electrical requirements to be delivered within 1 week of order
- 60 day timeline from agreement to beginning of installation
- Establish working group for project management (Moleaer, CLE, engineers and contractors)
- Upon container delivery, 2 week preliminary timeline for installation
- CLE to contract and/or perform any required site work
- CLE to contract power installation. 3ph 460V 225A (preliminary
- Moleaer to plan and work with associated parties for installation

Lake Elsinore NB Treatment Strategy

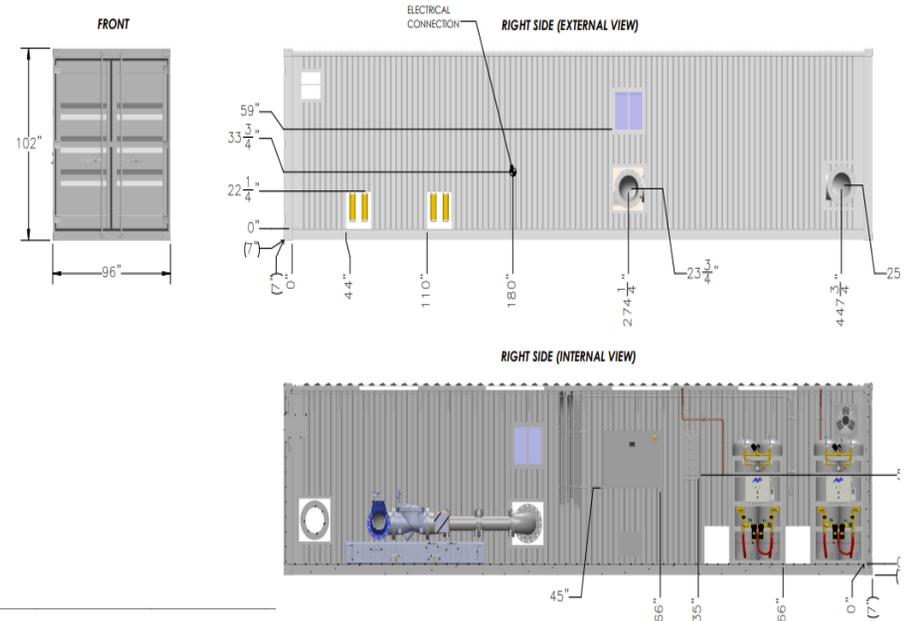
2. Containerized Solution Examples of Drawings Provided



Lake Elsinore NB Treatment Strategy

2. Containerized Solution Examples of Drawings Provided

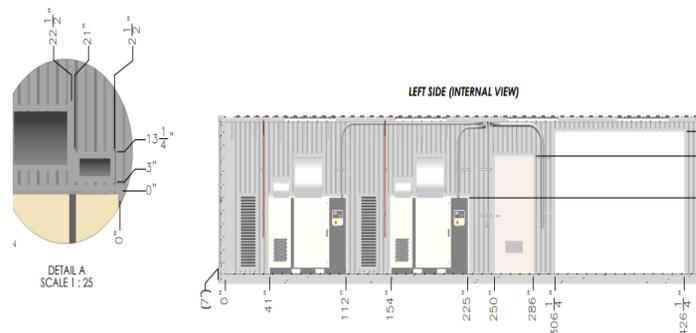
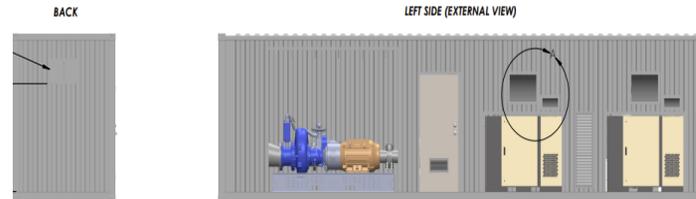
NOTES:
1. ALL DIMENSIONS ARE IN INCHES
2. ALL DIMENSIONS ARE REFERENCE



NOTES:
1. ALL DIMENSIONS ARE IN INCHES
2. ALL DIMENSIONS ARE REFERENCE

DESIGNED BY	DATE	APPROVED

DESIGNED BY	DATE	MOLEAER	20800 BELSHAW / CARSON CA, 9
CHECKED BY	DATE		
APPROVED BY	DATE		
DRAWING TITLE:			40' CONTAINER, 4800GPM, 2xNBGS
DRAWING NO.:			



CONTROLLED DOCUMENT	-	-	-	-
DESCRIPTION	ECO	DATE	CHECKED	APPROVED
REVISIONS				
PROPRIETARY AND CONFIDENTIAL:				
1. IN THIS DRAWING IS THE SOLE PROPERTY OF "MOLEAER INC." ANY USE WITHOUT THE WRITTEN PERMISSION OF "MOLEAER INC." IS PROHIBITED.				

DESIGNED BY	DATE	MOLEAER	
CHECKED BY	DATE		
APPROVED BY	DATE		
DRAWING TITLE:			40' CONTAINER, 4800GPM
DRAWING NO.:			
DRAWING SCALE:			SCALE: 1:9

Lake Elsinore NB Treatment Strategy

3. Treat:

- Moleaer to provide installation of Containerized NB system and associated piping
- CLE to contract, provide and connect 3ph 460V power at container location
- Localized treatment approach, while contributing to whole lake treatment
- Allow the city to demonstrate success in providing localized, at scale treatment, while using data collection to best guide sizing for whole lake or targeted lake treatment, utilizing all available tools, where appropriate.

Lake Elsinore NB Treatment Strategy

4. Monitor: Develop robust data set to quantify impact and make decisions for additional NB treatment capacity or complimentary treatments

- Lake: Monitor temperature, EC, pH/ORP, DO, turbidity, chlorophyll-a and Phycocyanin-BGA-PC
 - Monitor and understand diurnal changes and trends.
 - At least 1 month of baseline data
 - Utilize 5 buoy/sondes to capture water quality at effluent/lake discharge, around treatment area and at untreated part of the lake
 - Map and understand soft (organic and digestible) vs. hard bottom (inorganic and nondigestible) to establish baseline.
- Lake: Repeat sediment hardness mapping of treated area every 6 months to quantify the difference. (Initial, 6 mo and 12 month mapping are included)
- System: Moleaer nanobubble system has remote monitoring of pumping, O2 and O3 systems to ensure optimal performance, alert for any system issues.
- Safety: Ambient O3 monitors to ensure public and employee safety

Lake Elsinore NB Treatment Strategy

5. Maintain: Moleaer and associated vendor partners to provide maintenance on NB system components to provide exceptional uptime and treatment capacity

- Daily Monitoring of system performance and water quality reporting
- Monthly site visits by Moleaer to perform CIP (Clean in Place) of equipment, perform required sonde/probe maintenance, service components and clean intake screens, if/as needed.
- Quarterly and annual site visits to perform required maintenance
- 24/7 alerts/alarms to notify of system performance issues

Lake Elsinore NB Treatment: System Details

- (1) 40' High Cube, Open-Side Shipping Container. HVAC, interior and exterior lights, lockable
- (2) NBG6 Nanobubble Generators, 304 SS in series.
- (1) 50 hp Gorman Rupp T10 Self-Priming Pump and Variable Frequency Drive
- (1) 15 hp Ingersoll Rand Compressor with Integrated Air Drier (R11i TAS)
- (1) AirSep AS-G Oxygen Concentrator, 250-320 SCFH of Oxygen at 45-65 psig, up to 95% concentration.
220V, 50/60 Hz
- (1) Pinnacle Summit™ Model P10V-5 Ozone Generator Platform w/step down transformer, 57 ppd ozone at 9% concentration with 0-100% turn-down capability to achieve lower doses.
- (1) Pinnacle Model: 1370-7400-051, Chiller Assembly
- (2) Ambient ozone safety monitors
- (2) in-line ORP monitors
- (1) Water intrusion system monitoring to aid in mitigating water damage
- (1) Telemetry/Remote monitoring of system performance
- (5) In situ water quality monitoring buoy, 6 parameter
- (2) Self Cleaning high capacity suction screens for intake pipe, T type. Reduced intake velocity and small screen surface to protect aquatic life and nanobubble generator system

Preliminary estimated weight of container: 30,000#

Lake Elsinore NB Treatment: Scope of Work

Moleaer is to provide:

- **Nanobubble system, as described**
- **In Situ monitoring sondes/buoys, as described**
- **Unloading and setting of container. CLE to provide level, compacted gravel pad for crane**
- **On site commissioning and optimizing of nanobubble system**
- **Operation and daily check training of city staff**
- **Monthly, quarterly and annual maintenance of nanobubble generator system and monitoring buoys for 1 years**
- **Monthly and annual reports from monitoring buoys with analysis**
- **Sediment hardness mapping. 3 mapping events. Initial, 6 and 12 month.**

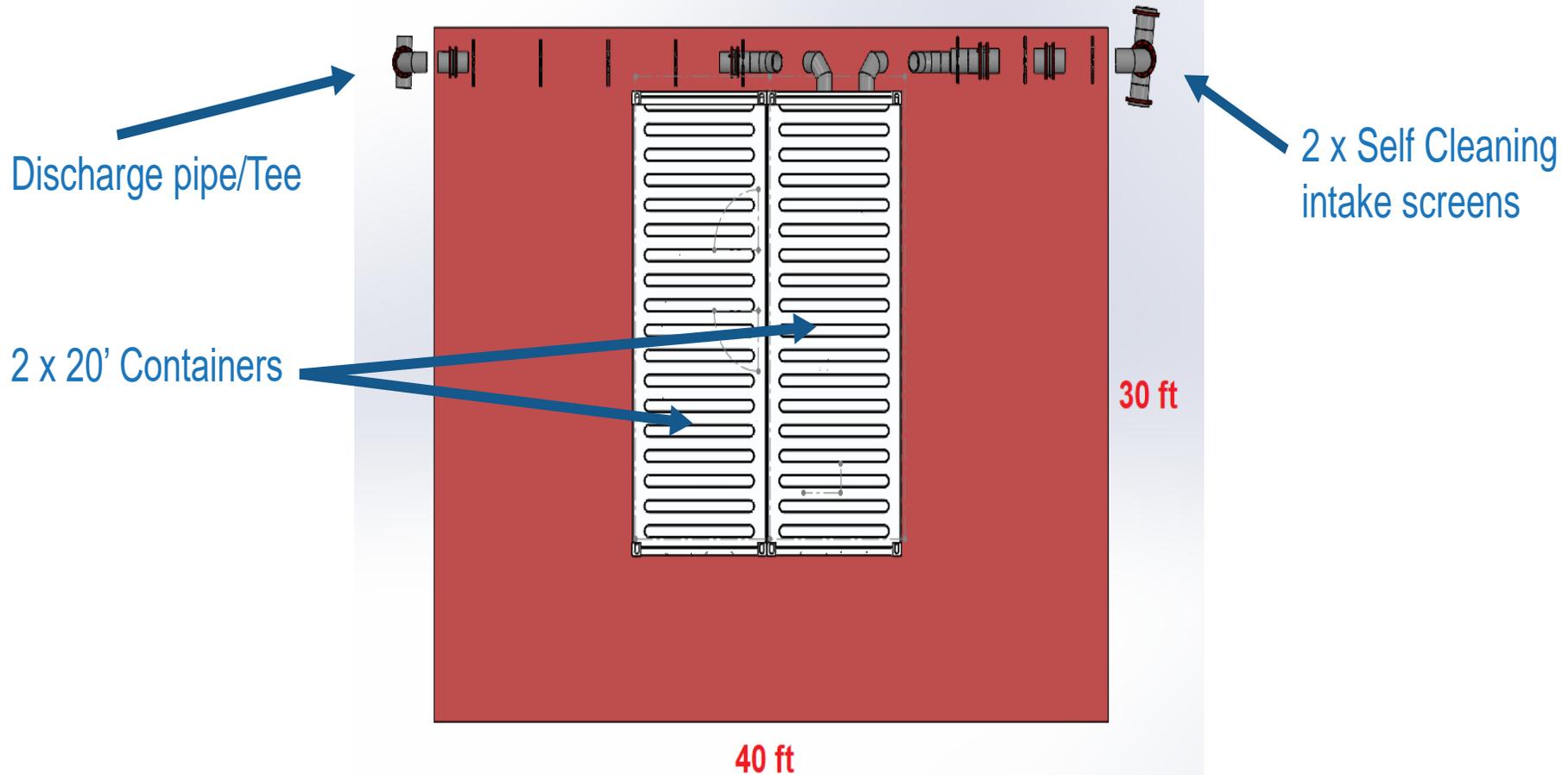
Lake Elsinore NB Treatment: Scope of Work

City of Lake Elsinore is to provide:

- All permissions, permits and access for installation, use and maintenance of the NB system.
- Required site work required to provide a compacted gravel pad suitable for a crane to set a 40' high cube container within 50' of shore.
- Suitable signs, warnings and barriers to restrict access of container, piping, intake and discharge piping
- Supply and connection of 3ph 460V 225A power to container primary power panel.
- Daily visual check on container and piping for damage, vandalism and/or water leaks. Reporting to Moleaer of any issues.
- Cost to repair system due to damage, vandalism or theft

Lake Elsinore NB Treatment:

Proposed Container layout on barge



Lake Elsinore NB Treatment:

Purchase, install, monitoring with 1 yr. service plan

PRICING SUMMARY			
	First Year	#/yrs	Total
Container-Cap Ex			\$1,139,173
Container-Install			\$310,855
Container- Service	240,769	1	\$240,769
Total + 1 Year Service			\$1,690,797
Year 2 Service + Mapping & Water Testing		1	\$229,899
Total for cap ex, install, and 2 years of service			\$1,920,696

Thank You



www.moleaer.com

AGREEMENT FOR PROFESSIONAL SERVICES

Solitude Lake Management, LLC

Lake Elsinore – Annual Lake Maintenance

This Agreement for Professional Services (the “Agreement”) is made and entered into as of [Click or tap to enter a date.](#), by and between the City of Lake Elsinore, a municipal corporation (“City”) and Solitude Lake Management LLC, a Lake Management Firm (“Consultant”).

RECITALS

A. The City has determined that it requires the following professional services:

Lake Elsinore – Annual Lake Maintenance

B. Consultant has submitted to City a proposal, dated August 15, 2023, attached hereto as Exhibit A (“Consultant’s Proposal”) and incorporated herein, to provide professional services to City pursuant to the terms of this Agreement.

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

D. City desires to retain Consultant to perform the services as provided herein and Consultant desires to provide such professional 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 completion of the professional 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 services pursuant to this Agreement upon receipt of a written notice to proceed and shall 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 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 Three Hundred and Forty Seven Thousand and One Hundred and Ninety Three dollars (347,193.60) 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: Solitude Lake Management, LLC
 Attn: [Click or tap here to enter text.](#)
 2844 Crusader Circle, Suite 450
 Virginia Beach, VA 23453

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”

Solitude Lake Management, a Lake Management Firm

City Manager

By: Click or tap here to enter text.

Its: Click or tap here to enter text.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Assistant City Manager

Attachments: Exhibit A – Consultant’s Proposal
Exhibit B – List of Subcontractors

SERVICES CONTRACT

CUSTOMER NAME: Lake Elsinore

SUBMITTED TO: Adam Gufarotti

CONTRACT EFFECTIVE DATE: July 1, 2023, through June 30, 2024

SUBMITTED BY: Jacob Hughey/ Rene Sandoval

SERVICES: Lake Elsinore - Annual Maintenance - Full Lake Spot Treatments

This agreement (the "Agreement") is made as of the date indicated above and is by and between SOLitude Lake Management, LLC ("SOLitude" or the "Company") and the customer identified above (the "Customer") on the terms and conditions set forth in this Agreement.

1. The Services. SOLitude will provide services at the Customer's property as described in Schedule A attached hereto:

2. PAYMENT TERMS. The Annual Contract Price is **\$347,193.60**. SOLitude shall invoice Customer **\$29,332.80 per month (March through October)** and **\$28,132.80 per month (November through February)** for the Services to be provided under this Agreement. The term of this agreement is for a period of twelve (12) months, with payment invoiced on the first day of each month, reminding them that a contract payment is due by the end of that same month. The customer is obligated to pay each monthly contract payment per the terms of this contract, without any obligation on the part of SOLitude to invoice or send any other sort of reminder or notice. Due to the seasonality of these services, and the disproportionate amount of time and materials dedicated to providing these services during some times of the year as compared to others, based on the season, weather patterns, and other natural factors, the amount billed and paid to date is not necessarily equivalent to the amount of work performed to date.

The Customer will be liable for any returned check fees and any collection costs, including reasonable attorney fees and court costs, for any invoices not otherwise timely paid, and interest at the rate of 1% per month may be added to all unpaid invoices. Should the work performed be subject to any local, state, or federal jurisdiction, agency, or other organization of authority for sales or other taxes or fees in addition to those expressly covered by this contract, the customer will be invoiced and responsible for paying said additional taxes in addition to the contract price and other fees above. SOLitude shall be reimbursed by the customer for any non-routine expenses, administrative fees, compliance fees, or any other similar expense that are incurred as a result of requirements placed on SOLitude by the customer that are not covered specifically by the written specifications of this contract.

Competitively Sensitive & Proprietary Materials – The information contained herein is the intellectual property of SOLitude Lake Management. Recipient may not disclose to any outside party any proprietary information, processes, or pricing contained in this document or any of its attachments without the prior written consent of SOLitude Lake Management. This document is provided to the recipient in good faith and it shall be the responsibility of the recipient to keep the information contained herein confidential.



3. TERM AND EXPIRATION. This Agreement is for an annual management program as described in the Schedule A attached. Any additional services will be provided only upon additional terms as agreed to by the parties in writing.
4. PRICING. The Company reserves the right to annually increase the amount charged for the services beyond the escalation percentage stated in the TERM AND EXPIRATION above, which shall be communicated by written notice to the Customer, which notice may be by invoice.
5. TERMINATION. If SOLitude terminates your service for nonpayment or other default before the end of the Services Contract, if the Customer terminates this Services Contract for any reason other than in accordance with the cancellation policy outlined above, or in the event this Contract does not automatically renew and the customer terminates it before the termination date, Customer agrees to pay SOLitude, in addition to all other amounts owed, an Early Termination Fee in the amount specified below ("Early Termination Fee"). The Customer's Early Termination Fee will be 50% of the remaining value of the Contracted Price. The Early Termination Fee is not a penalty, but rather a charge to compensate SOLitude for the Customer's failure to satisfy the Services Contract on which the Customer's rate plan is based.
6. INSURANCE AND LIMITATION OF LIABILITY. SOLitude will maintain general liability and property damage insurance as necessary given the scope and nature of the Services. The Company will be responsible for those damages, claims, causes of action, injuries or legal costs to the extent of its own direct negligence or misconduct, and then only to an amount not to exceed the annual value of this Agreement. In no event will any party to this Agreement be liable to the other for incidental, consequential or purely economic damages.
7. FORCE MAJEURE. The Company shall not be liable for any delay in performing the Services, nor liable for any failure to provide the Services, due to any cause beyond its reasonable control.
8. ANTI-CORRUPTION AND BRIBERY. Each party represents that neither it nor anyone acting on its behalf has offered, given, requested or accepted any undue financial or other advantage of any kind in entering into this Agreement, and that it will comply with all applicable laws and regulations pertaining to corruption, competition and bribery in carrying out the terms and conditions of this Agreement.
9. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the state in which the Services are performed.
10. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter and replaces any prior agreements or understandings, whether in writing or otherwise. This Agreement may not be modified or amended except by written agreement executed by

Competitively Sensitive & Proprietary Materials – The information contained herein is the intellectual property of SOLitude Lake Management. Recipient may not disclose to any outside party any proprietary information, processes, or pricing contained in this document or any of its attachments without the prior written consent of SOLitude Lake Management. This document is provided to the recipient in good faith and it shall be the responsibility of the recipient to keep the information contained herein confidential.



both parties. In the event that any provision of this Agreement is determined to be void, invalid, or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.

11. NOTICE. Any written notice provided under this Agreement may be sent via overnight mail, certified mail, hand delivery or electronic mail with delivery confirmation, to the individuals and addresses listed below.

12. BINDING. This Agreement shall inure to the benefit of and be binding upon the legal representatives and successors of the parties.

13. FUEL/TRANSPORTATION SURCHARGE. Like many other companies that are impacted by the price of gasoline, a rise in gasoline prices may necessitate a fuel surcharge. As such, the Company reserves the right to add a fuel surcharge to Customer's invoice for any increase in the cost of fuel as measured above the same time period in the prior year (by the National U.S. Average Motor Gasoline-Regular Fuel Price per Gallon Index reported by the U.S. Department of Energy). The surcharge may be adjusted monthly (up or down) with the price of gasoline.

14. DISCLAIMER. SOLitude is not responsible for the failure of any treatment, equipment installation, or other work that result from dam or other structural failures, severe weather and storms, flooding, or other acts of God that are outside of the control of SOLitude.

Customers understands and acknowledges that there are irrigation restrictions associated with many of the products used to treat lakes and ponds. The customer is responsible for notifying SOLitude in advance of the contract signing and the start of the contract if they utilize any of the water in their lakes or ponds for irrigation purposes. The customer accepts full responsibility for any issues that may arise from the irrigation of turf, ornamentals, trees, crops, or any other plants as a result of treated water being used by the customer for irrigation without the consent or knowledge of SOLitude.

Although there is rarely direct fish toxicity with the products used for treatment when applied at the labeled rate, or the installation and normal operation of the equipment we install, there is a risk under certain circumstances of significant dissolved oxygen drops. This risk is most severe in times of extremely hot weather and warm water temperatures, as these are the conditions during which dissolved oxygen levels are naturally at their lowest levels. Oftentimes lakes and ponds will experience natural fish kills under these conditions even if no work is performed. Every effort, to include the method and timing of application, the choice of products and equipment used, and the skill and training of the staff, is made to avoid such problems. However, the customer understands and accepts that there is always a slight risk of the occurrence of adverse conditions outside the control of SOLitude that will result in the death of some fish and other aquatic life. The customer also understands and accepts that similar risks would remain even if no work was performed. The customer agrees to hold SOLitude harmless for any issues with fish or

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other aquatic life which occur as described above, or are otherwise outside the direct control of SOLitude, unless there is willful negligence on the part of SOLitude.

15. NONPERFORMANCE. In the case of any default on the part of the Company with respect to any of the terms of this Agreement, the Customer shall give written notice thereof, and if said default is not made good within (30) Thirty Days, the Customer shall notify the Company in writing that there has been a breach of the Agreement. The Company in case of such breach shall be entitled to receive payment only for work completed prior to said breach, so long as the total paid hereunder does not exceed the Contract sum.

16. E-Verify. Solitude Lake Management LLC utilizes the federal E-Verify program in contracts with public employers as required by Florida State law, and acknowledges all the provisions of Florida Statute 448.095 are incorporated herein by reference and hereby certifies it will comply with the same.

ACCEPTED AND APPROVED:

SOLITUDE LAKE MANAGEMENT, LLC.

Lake Elsinore

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Please Remit All Payments to:

**1320 Brookwood Drive Suite H
Little Rock AR 72202**

Customer's Address for Notice Purposes:

Please Mail All Contracts to:

**2844 Crusader Circle, Suite 450
Virginia Beach, VA 23453**

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SCHEDULE A - SERVICES

Project Summary:

SOLitude proposes to spot treat the entirety of Lake Elsinore with the following products and rates:

1. (March through October) - Twice a month service treating with a peroxide based algaecide as well as a phosphorus binding product with a total monthly volume of 8,000 pounds of peroxide based algaecide and 80 (55 pound) bags of phosphorus binding product.
2. (November through February) - Once a month service treating with a peroxide based algaecide and phosphorus binding product with a total monthly volume of 8,000 pounds of peroxide based algaecide and 80 (55 pound) bags of phosphorus binding product.

Monitoring:

1. A SOLitude Aquatic Specialist will visit the site and inspect the lake on a **two (2) times per month** basis during the months of **March through October** and on a **one (1) time per month** basis during the months of **November through February**.
2. Observations and data collected during the inspections will be used to inform and guide all activities required to fulfill the requirements of this contract as specified in the description of services below.

Visual Inspections:

1. A visual inspection of the lake will be performed during each visit to the site. The inspections shall include the following:
 - Water levels
 - Water clarity or quality
 - Turbidity
 - Beneficial Aquatic Vegetation
 - Nuisance, Invasive, or Exotic Aquatic Vegetation
 - Algae
 - Physical components such as above ground pipes, inlet and outlet structures, trash racks, emergency spillways, and dams
 - Erosion
 - Issues with shoreline and bank stabilization measures such as rip rap stone, bulkheads, retaining walls, etc.
 - Forebays and inflowing or outflowing swales, ditches, and stream channels
 - Vegetated buffers
 - Sedimentation
 - Nuisance animal activity
 - Fish habitat
 - Mosquito breeding conditions and habitat

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- Trash and debris
2. Any issues or deficiencies that are observed during this visual monitoring will be documented by our staff in the field notes of the service order completed at the time the issue was first observed and reported to the Customer in writing as part of that month's service report.
 3. Customers will be notified immediately if there are any deficiencies observed that appear in the judgment of our staff to be posing an immediate risk or otherwise jeopardizing the integrity of the lake(s) structures.
 4. The scope of these services is limited to what can be reasonably observed at the surface of the water and above the ground around the water that makes up the physical structure of the lake(s). These routine inspection services are not intended to replace any requirement or need for a more comprehensive engineered inspection, or any other type of inspection that would require expertise or equipment to survey the condition of the physical components of the lake(s) underground, underwater, or inside any of the associated structures.

Lake Algae Control:

1. The lake will be inspected on a **two (2) times per month** basis during the months of **March through October** and on a **one (1) time per month** basis during the months of **November through February**.
2. Any algae found in the lake(s) with each inspection shall be treated and controlled through the application of algaecides, aquatic herbicides, and aquatic surfactants as needed for control of the algae present at the time of service.

Water Quality Monitoring:

1. Lake water samples will be taken and tested **one (1) time per month** for the following parameters:

Temperature	Dissolved Oxygen
pH	Phosphates
Nitrates	Conductivity
1. The results of the tests along with recommendations and analysis of the results will be provided to the Customer in a written report following each testing period.
2. Any data collected that needs immediate action to resolve an issue will be brought to the Customer's attention at once.

Service Reporting:

1. Customer will be provided with a monthly service report detailing all of the work performed as part of this contract.

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Permitting (when applicable):

1. SOLitude staff will be responsible for the following:
 - a. Obtaining any Federal, state, or local permits required to perform any work specified in this contract where applicable.
 - b. Attending any public hearings or meetings with regulators as required in support of the permitting process.
 - c. Filing of any notices or year-end reports with the appropriate agency as required by any related permit.
 - d. Notifying the Customer of any restrictions or special conditions put on the site with respect to any permit received, where applicable.

Customer Responsibilities (when applicable):

1. Customer will be responsible for the following:
 - a. Providing information required for the permit application process upon request.
 - b. Providing Certified Abutters List for abutter notification where required.
 - c. Perform any public filings or recordings with any agency or commission associated with the permitting process, if required.
 - d. Compliance with any other special requirements or conditions required by the local municipality.
 - e. Compliance and enforcement of temporary water-use restrictions where applicable.

General Qualifications:

1. Company is a licensed pesticide applicator in the state in which service is to be provided.
2. Individual Applicators are Certified Pesticide Applicators in Aquatics, Public Health, Forestry, Right of Way, and Turf/Ornamental as required in the state in which service is to be provided.
3. Company is a SePRO Preferred Applicator and dedicated Steward of Water. Each individual applicator has been trained and educated in the water quality testing and analysis required for prescriptive site-specific water quality management and utilizes an integrated approach that encompasses all aspects of ecologically balanced management. Each applicator has received extensive training in the proper selection, use, and application of all aquatic herbicides, algaecides, adjuvants, and water quality enhancement products necessary to properly treat our Customers' lakes and ponds as part of an overall integrated pest management program.
4. Company guarantees that all products used for treatment are EPA registered and labeled as appropriate and safe for use in lakes, ponds, and other aquatic sites, and are being applied in a manner consistent with their labeling.

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5. All pesticide applications made directly to the water or along the shoreline for the control of algae, aquatic weeds, or other aquatic pests as specified in this contract will meet or exceed all of the Company's legal regulatory requirements as set forth by the EPA and related state agencies for NPDES and FIFRA. Company will perform treatments that are consistent with NPDES compliance standards as applicable in and determined by the specific state in which treatments are made. All staff will be fully trained to perform all applications in compliance with all federal, state, and local law.
6. Company will furnish the personnel, vehicles, boats, equipment, materials, and other items required to provide the foregoing at its expense.

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Quote valid for 14 days



SALES AGREEMENT

BUYER: CITY OF ELSINORE 130 SOUTH MAIN STREET LAKE ELSINORE, CA 92530 ADAM GUFAROTTI (951) 674-3124	SELLER: Poseidon LLC. 725 E. Parr Road Berne, IN 46711 PH: 866-992-2743
SHIP TO: CITY OF ELSINORE LAKE ELSINORE, CA 92530	PROJECT INFORMATION: LOOKING TO PUT A 40' SHIPPING CONTAINER WITH PUMPS ON A 40' X 30' X 5' BARGE.
CONTRACT DATE: 08/11/2023	CONTACT: ADAM GUFAROTTI
CONTRACT NUMBER: CP5305-0	PROJECT NUMBER: P2-5' SALE NEW

PAYMENT TERMS: Five percent (5%) non-refundable down payment is due at time of order. Balance due prior to shipment

Wire/ACH payment info: Lake City Bank, Fort Wayne, IN - Routing #074903719, PoseidonLLC. Account #1011557959

DESCRIPTION OF EQUIPMENT:

Qty	UOM	Description	Serial Number	New / Used	Price	Extended
3	each	P2 - 40' x 10'6" x 5' RF Deck w Hatch 810-047 2405		New	\$61,900.00	\$185,700.00
6	each	DECK CLEAT 18" 880-002 USED - BC01		New	\$499.00	\$2,994.00
Sub-Total						\$188,694.00
		Sales Tax State	CA	8.750%		\$16,510.73
Grand total not including freight						\$205,204.73

FREIGHT CHARGES

Qty	Estimated Mobilization Freight	Extended
From Berne, IN		
2	Step Deck Truck w/ over width permits	\$17,900.00
2	Load Fee Per Truck	\$1,300.00
SubTotal		\$19,200.00
	Sales Tax State	CA
		8.750%
Total Estimated Freight to the project		\$20,880.00

Total Estimated Shipping Cost For Project: \$20,880.00

Trucking company may require a minimum of 50% payment prior to loading.

This Sale Agreement is entered into by and between Seller and Buyer on the date set out above and the Seller and Buyer hereby agree to the attached Terms and Conditions which are incorporated by reference as though fully set out herein. The Buyer represents and warrants that it has reviewed and agrees to be bound by the Seller's General Use Guidelines on the Seller's website (<https://www.poseidonbarge.com/products/resources/general-use-guidelines/>) and said General Use Guidelines are incorporated by reference as additional terms and conditions.

08/11/2023
 CP5305-0
 BG

FOR INTERNAL USE ONLY
SALES REVIEW: _____
ADMIN REVIEW: _____

Quote valid for 14 days



SALES AGREEMENT

SELLER: Poseidon LLC.

BUYER: CITY OF ELSINORE

A handwritten signature in cursive script that reads "Carl Piedmont".

NAME: Carl Piedmont
TITLE: West Coast Sales Manager
Date Signed: 8/11/23

NAME: ADAM GUFAROTTI
TITLE: _____
Date Signed: _____

Terms and Conditions of Sale

1. **PAYMENT** - Prior to shipment of the equipment on this Agreement, Buyer shall make payment in full to Poseidon LLC, in United States Dollars, unless otherwise agreed to by an authorized officer of Poseidon LLC in writing. All accounts that are past due will be charged interest at the maximum rate permitted by law. Should the Buyer fail to make any payment when due, Seller may immediately terminate this Agreement, take possession of the Equipment without becoming liable for trespass, and recover all sums due, full damages for any injury to, and all expenses incurred in repossessing the Equipment, including attorney fees and other costs of enforcing this Agreement. Title to the equipment covered by this Agreement shall pass to Buyer upon payment in full.
2. **TAXES** - Buyer agrees to pay, and hold Poseidon LLC harmless from any and all taxes that may be levied or assessed as a result of this Agreement including, but without limitation, ad valorem, sales and/or use taxes.
3. **DELIVERY** - The items covered by this Agreement shall be delivered to Buyer F.O.B. trucks, Poseidon LLC plant in Berne, Indiana or any other storage yard used by Poseidon LLC. So being, risk of loss of equipment covered by the Agreement shall pass to Buyer upon delivery of the items to Buyer, F.O.B. truck, delivery site; all fees, costs, charges, incurred in connection with such equipment from and after such delivery, including, but not limited to, any import fees, custom duties and permits, and taxes in any country outside of the United States of America to which such equipment may be destined, shall be exclusively borne and paid by the Buyer.
4. **WAIVER OF DEFECTS AND RISK OF LOSS** - Buyer agree to make a complete inspection within 48 hours after receipt of the equipment covered by the Agreement, and to make any written claims for defects within that 48-hour period.
5. **WARRANTY** - Poseidon LLC's sole and only warranty with respect to the NEW items covered by the Agreement is that the same will meet the specifications that Poseidon LLC issues in writing, in its applicable catalogs or other literature, and Poseidon LLC's sole and only obligation and liability in connection with its foregoing warranty is that Poseidon will repair or replace during the period of one (1) year from the respective date of delivery to Buyer, any of such NEW items which do not meet said specifications; this excludes all USED items, which are sold "as is". This Warranty is Void if any equipment is altered, modified or repaired by any party other than Poseidon LLC, without written approval by an authorized
6. **INDEMNITY** - Buyer hereby indemnifies and agrees to hold Seller harmless from any and all liability and expense arising out of the purchase, ordering, use, condition, or operation of the equipment in this Agreement, or due to any cause, including liability for death or injury to persons, damage to property, and strict liability under the laws or judicial decisions of any state or the United States, or any other Country outside of the United States to which such equipment may be destined, and legal expenses, including attorneys' fees (including appeals), in defending any claim brought to enforce any such liability or expense, excluding claims directly attributable to Seller's gross negligence. It is expressly agreed and understood that there are no expressed or implied warranties of any kind on the part of Poseidon LLC as to merchantability or fitness for a particular purpose on any equipment in this Agreement. Buyer acknowledges that it has relied solely on its own judgment and expertise in choosing equipment for its particular purpose.
7. **LIMITATION OF LIABILITY**: Seller shall not be liable for any loss, damage or expense of Buyer or any third party arising directly or indirectly out of the sale or relating to this Agreement. In no event shall Seller be liable for special, indirect, incidental or consequential damages of any kind or nature or due to any cause. Buyer's sole right and remedy shall be the repair or replacement of any defective equipment relating to the Agreement.
8. **GOVERNING LAW**: Buyer agrees that this Agreement, and all documents issued in connection therewith, shall be governed by and interpreted in accordance with the laws of the State of Indiana. Buyer agrees that any appropriate state or federal district court located in the City of Fort Wayne, Allen County, Indiana, shall have exclusive jurisdiction over any case or controversy arising out of, under, or in connection with this Agreement. Each of the parties hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.
9. **FORCE MAJEURE**: Seller is not liable for delays in performance or delivery due to causes beyond its reasonable control, including and without limit, any delay, interruption in, or failure of sources to supply materials or equipment to complete the Buyer's order. Seller is not liable for delays due to internal labor disputes or labor disputes at the delivery location, transportation issues, fire, pandemic, tornado, acts of God or Public disturbances/riots; or any governmental emergency orders or contracts taking priority whether or not voluntarily assumed. Seller is not liable for any down time expense by Buyer related to equipment performance. Seller agrees to immediately notify the Buyer of any such issues.
10. **WARNING**: The use of Poseidon LLC equipment requires competent personnel and application of engineering principles. The improper use, operation, modification, maintenance or repair of Poseidon LLC equipment can be dangerous and result in property damage, injury or death. Poseidon LLC offers its engineering services at no cost to all Poseidon LLC customers. Please refer to General Use Guidelines on the Poseidon LLC website.
11. **PROPRIETARY INFORMATION AND CONFIDENTIALITY**: Data, drawings, specifications, pricing, or other technical information directly or indirectly furnished in writing or otherwise by Poseidon LLC to Buyer pursuant to the Agreement, shall in no event become the property of Buyer, and shall be used only in fulfilling the obligations imposed by the Agreement and shall not be duplicated or disclosed to third parties or used in whole or in part for any other purpose. The furnishings of such data, drawings, specifications or other technical information shall not be construed as granting any rights whatsoever, express or implied, under any patents of Poseidon LLC.
12. **ENTIRE AGREEMENT**: This Agreement constitutes the entire agreement of the parties and supersedes all prior oral or written agreements and understandings with respect to the subject matter of this Agreement. This Agreement shall not be modified except by a writing executed by authorized representatives of both parties.