

16) **Agreement for Contractor Services with Ballard Marine Construction for Installation of Electrical Equipment and Barge Anchorage**

1. Approve and authorize the City Manager to execute the Contractor Services Agreement with Ballard Marine Construction in an amount not to exceed \$656,590 for installation of electrical equipment and barge anchorage in such final form as approved by the City Attorney and authorize the City Manager to execute change orders not exceeding a 10% contingency of \$65,659 for uncertainties and adjustments.
2. Waive the formal bidding process per Municipal Code Section 3.08.070(G) for the contractor services to be performed by Ballard Marine Construction given the highly specialized work, essential heavy equipment and unique qualifications of the contractor.



## REPORT TO CITY COUNCIL

**To:** Honorable Mayor and Members of the City Council

**From:** Jason Simpson, City Manager

**Prepared by:** Jason Simpson, City Manager

**Date:** January 9, 2024

**Subject:** Agreement for Contractor Services with Ballard Marine Construction for Installation of Electrical Equipment and Barge Anchorage

### **Recommendation**

1. Approve and authorize the City Manager to execute the Contractor Services Agreement with Ballard Marine Construction in an amount not to exceed \$656,590 for installation of electrical equipment and barge anchorage in such final form as approved by the City Attorney and authorize the City Manager to execute change orders not exceeding a 10% contingency of \$65,659 for uncertainties and adjustments.
2. Waive the formal bidding process per Municipal Code Section 3.08.070(G) for the contractor services to be performed by Ballard Marine Construction given the highly specialized work, essential heavy equipment and unique qualifications of the contractor.

### **Background**

As part of our recently adopted lake management plan, the City Council approved the use of nanobubble treatment for Lake Elsinore. The equipment will be installed in a shipping container on a floating barge approximately 100 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.

### **Discussion**

Staff is recommending a Contractor Services Agreement with Ballard Marine Construction for installation of Electrical Equipment and Barge Anchorage. Due to the special nature of underwater work and specialized cranes required to install the electrical equipment and anchoring of the floating barge, staff recommends that the City Council waive the formal bidding process per Municipal Code Section 3.08.070(G).

Ballard Marine Construction has fifty years of experience in the heavy civil marine construction industry and is uniquely qualified to perform the installation work of the electrical equipment and barge anchorage to integrate with the custom nanobubbler system. Ballard maintains a proven track record of safe, efficient, and innovative marine construction solutions throughout the United States with offices in southern California. In addition to the unique experience and qualifications of the crew, Ballard will also provide the specialized heavy equipment necessary to properly perform the work and will assist the City with engineering of the barge to ensure stability of the equipment.

### **Fiscal Impact**

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

### **Attachments**

Attachment 1 - Agreement  
Exhibit A - Quote

## **AGREEMENT FOR CONTRACTOR SERVICES**

### ***Ballard Marine Construction***

#### ***Installation of Electrical Equipment and Barge Anchorage***

This Agreement for Contractor Services (the "Agreement") is made and entered into as of January 9, 2024, by and between the City of Lake Elsinore, a municipal corporation ("City") and Ballard Marine Construction, Inc., a Corporation ("Consultant").

### **RECITALS**

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

*Installation of Electrical Equipment and Barge Anchorage for Lake Water Quality Equipment.*

B. Consultant has submitted to City a proposal, dated January 4, 2024, attached hereto as Exhibit A ("Consultant's Proposal") and incorporated herein, to provide contractor 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 contractor services as set forth in this Agreement.

### **AGREEMENT**

1. Scope of Services. Contractor shall perform the services described in Contractor's Proposal (Exhibit A). Contractor shall provide such services at the time, place, and in the manner specified in Contractor'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 Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the professional services contemplated pursuant to this Agreement according to the agreed upon performance schedule in Contractor's Proposal (Exhibit A).

b. Performance Schedule. Contractor 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 Contractor's Proposal (Exhibit A). When requested by Contractor, 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 Six Hundred and Fifty-Six Thousand and Five Hundred and Ninety dollars (\$656,590) 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:              Ballard Marine Construction  
   Attn: Chuck Phipps  
   6200 Angelo Ct.  
   Loomis, CA 95650

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”

Ballard Marine Construction, Inc., a Corporation

\_\_\_\_\_  
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

EXHIBIT A  
CONSULTANT'S PROPOSAL  
[ATTACHED]

EXHIBIT B  
LIST OF SUBCONTRACTORS  
[ATTACHED]



A Proposal Prepared For:

## **Lake Elsinore Barge and Nano Bubbler Install**

**City of Lake Elsinore**

**Bid Date: 1/4/2024**

Prepared By:

Ballard Marine Construction

Chuck Phipps

Chuck.Phipps@ballardmc.com

866.782.6750

### **CONFIDENTIALITY**

This proposal, including pricing, contains confidential and proprietary information and shall not be duplicated, used or disclosed – in whole or in part – for any purpose other than to evaluate this proposal for the specific project named above. The proposal and the information contained herein may be shared with Client's customer, employees, consultants and agents only to the extent such entities and individuals have a need to know such information in connection with the Project and have been informed of the confidential and proprietary nature of the information. Client shall take all reasonable precautions to prevent disclosure of confidential and proprietary information to any other person or entity. In the event Client or third party uses any information in this proposal for purposes other than as stated above, Ballard Marine shall not be liable in any way relating to such use.



**BALLARD**  
**MARINE CONSTRUCTION**

1/4/2024

Adam Gufarotti  
City of Lake Elsinore  
Lake Elsinore, CA  
(951) 674-3124 Ext. 314  
[agufarotti@lake-elsinore.org](mailto:agufarotti@lake-elsinore.org)

RE: Lake Elsinore Barge and Nano Bubbler Install

Dear Adam Gufarotti,

Ballard Marine Construction (Ballard) appreciates the opportunity to submit our proposal for the Lake Elsinore Barge and Nano Bubbler Install as per your requested scope of work. Ballard personnel will comply with all local, state and federal rules and regulations applicable to the performance of our services.

Ballard looks forward to working with you on this project. Should additional information be required, or if I may be of further assistance, please do not hesitate to contact me.

Respectfully Submitted,

Ballard Marine Construction  
Chuck Phipps  
866.782.6750 | [Chuck.Phipps@ballardmc.com](mailto:Chuck.Phipps@ballardmc.com)

## ABOUT BALLARD

Ballard Marine Construction (Ballard) has been working in the heavy civil marine construction industry since the 1970s; providing complete infrastructure inspection, construction, rehabilitation and maintenance solutions on projects worldwide since our inception. Ballard has always taken an innovative approach to offering highly technical heavy civil marine and underwater solutions to our local, national, and international clients in the power, transportation, environmental, water and wastewater, and industrial markets.

## PROJECT OVERVIEW

Ballard will provide a crew and marine equipment to perform Lake Elsinore Barge and Nano Bubbler Install. This project is quoted as lump sum and Time and Materials

|           |                       |                  |              |
|-----------|-----------------------|------------------|--------------|
| Client:   | City of Lake Elsinore | Start Date:      | January 2024 |
| Location: | Lake Elsinore, CA     | Duration (est.): | 5-7 Days     |



## PROJECT PRICING SUMMARY

### Price Excluding Item 4: Diving to Jet Power Cord

| BALLARD MARINE CONSTRUCTION PRICING SUMMARY |   |             |            |                       |                      |
|---|---|-------------|------------|-----------------------|----------------------|
| Item  | Description   | Actual Unit | Est. Units | Cost/Unit             | Subtotal             |
| 1   | Mobilization / Demobilization                                       | LS          | 1.00       | \$ 88,810.00          | \$ 88,810.00         |
| 2   | Barge Assembly, Mooring, and Installation (6 Man Crew, 10hr Day)    | LS          | 1.00       | \$ 97,970.00          | \$ 97,970.00         |
| 3   | Service Crane (Nano-Bubbler Barge Assembly)                         | LS          | 1.00       | \$ 45,100.00          | \$ 45,100.00         |
| 4   | Diving to Jet Power Cable Below Lakebed (6 man dive Crew, 10hr day) | LS          | 0.00       | \$ 92,180.00          | \$ -                 |
| 5   | Electrical Work and Sub Marine Cable                                | LS          | 1.00       | \$ 293,000.00         | \$ 293,000.00        |
| 6   | Nano Bubbler Permanent Barge Anchorage                              | LS          | 1.00       | \$ 63,570.00          | \$ 63,570.00         |
| 7   | HDPE Piping, Davit, and Bases                                       | LS          | 1.00       | \$ 68,140.00          | \$ 68,140.00         |
|   |   |             |            | <b>Estimate Price</b> | <b>\$ 656,590.00</b> |

### Price Including Item 4: Diving to Jet Power Cord

| BALLARD MARINE CONSTRUCTION PRICING SUMMARY |   |             |            |                       |                      |
|---|---|-------------|------------|-----------------------|----------------------|
| Item  | Description   | Actual Unit | Est. Units | Cost/Unit             | Subtotal             |
| 1   | Mobilization / Demobilization                                       | LS          | 1.00       | \$ 88,810.00          | \$ 88,810.00         |
| 2   | Barge Assembly, Mooring, and Installation (6 Man Crew, 10hr Day)    | LS          | 1.00       | \$ 97,970.00          | \$ 97,970.00         |
| 3   | Service Crane (Nano-Bubbler Barge Assembly)                         | LS          | 1.00       | \$ 45,100.00          | \$ 45,100.00         |
| 4   | Diving to Jet Power Cable Below Lakebed (6 man dive Crew, 10hr day) | LS          | 1.00       | \$ 92,180.00          | \$ 92,180.00         |
| 5   | Electrical Work and Sub Marine Cable                                | LS          | 1.00       | \$ 293,000.00         | \$ 293,000.00        |
| 6   | Nano Bubbler Permanent Barge Anchorage                              | LS          | 1.00       | \$ 63,570.00          | \$ 63,570.00         |
| 7   | HDPE Piping, Davit, and Bases                                       | LS          | 1.00       | \$ 68,140.00          | \$ 68,140.00         |
|   |   |             |            | <b>Estimate Price</b> | <b>\$ 748,770.00</b> |

### Pricing Notes:

- **Mobilization Rate** – applies during preparation and loading of all equipment and supplies require to perform the work, and during travel time to the Project site in preparation for initial setup.
- **Working Day Rate(s)** – apply from initial arrival of crew at the Project site and at all times crew is on site until work is completed, all equipment is loaded, and crew leaves the Project site.
- **Standby Rate** – applies at any time Client requires crew to stand by at an offsite location or near the Project site. Will be billed at a minimum of eight (8) hours per day/40 hours per week at each employee's billable classification. Owned equipment will be billed at sixty percent (60%) of rate(s) shown above. Rented equipment will be billed at one hundred percent (100%) of the rate(s) shown above.

- Demobilization Rate – applies after completion of the work from the point equipment and crew leave the Project site, return to Ballard’s facility, and until all restocking of equipment is completed.
- Dive System Maintenance: when applicable, maintenance will be performed daily for up to one (1) hour, accruing up to eight (8) hours per project, and will not be considered down time.
- Other:
  - Consumables, materials and third party services required to complete the work will be billed at cost plus 15% for T&M Change Orders for additional work scope.
  - Additional items will also be billed at cost plus 15%, including:
    - Additional Client requested for T&M Change Orders for additional work scope, services, equipment, or tooling (when available)
    - Mobilization of additional equipment, unless Ballard and Client agree Client will be directly responsible for mobilization
    - Welders provided by Ballard for any Client provided equipment
  - All work performed will be in accordance with working rules of applicable local union agreements, prevailing wage, and/or Davis Bacon requirements.
  - Rates do not include any applicable sales or use taxes.

#### *Project Specific Notes, Clarifications, and Exclusions*

1. Pricing is based on the preliminary drawings provided by The City of Lake Elsinore. 80F0-200-GAD PRELIMINARY dated 10/24/2023
2. An RFP/RFQ has not been provided to Ballard to base the pricing. All pricing is based on email and verbal communication, and the preliminary plans provided (80F0-200-GAD PRELIMINARY dated 10/24/2023).
3. Preliminary drawings provided by the City of Lake Elsinore do not show or mention a design of anchoring system, sacrificial anodes, system piping hoists or frames, security fencing, or cover plates for medication once piping is installed.
4. A Bill of Materials (BOL) has not been provided by the City of Lake Elsinore.
5. Bonding and permitting not included in the proposal.
6. Ballard is not responsible for the condition of the existing aeration lines or power cable that are laid across the lakebed.
7. Pricing assumes aeration lines and power cables will be marked out by others at the four (4) anchorage drop points.
8. Pricing assumes Power Cable installation onshore can be direct burial conduit and NOT concrete incased conduit.
9. Pricing assumes Power Cable will be laid on the lakebed and not protected.
10. If diver jetting of the power cable below the lakebed is selected, Ballard will use a diver’s water jet to bury the power cable below the surface of the lakebed. If the power cable is to cross/intersect existing cables, piping or other components/obstructions that prevent the cable from being directly jetted down at any specific location, Ballard will not be

responsible to jet down the existing obstruction to facilitate the burial of the new power cable.

11. Ballard is not responsible for damage to the In-Water Power cable after demobilization since in-water protection (Submar Mats) was declined.
12. Ballard to connect power cable to Nano-Bubbler barge breaker panel, other barge power connections and installations to be performed by others.
13. Ballard is not responsible for any unmarked/unknown lines that are not identified through the 811 process.
14. If the City of Lake Elsinore chooses to forgo stability and anchoring engineering of the floating nano-bubbler barge, Ballard will not be held responsible for the stability of the barge or the failure to maintain the barge positioning once installed.
15. Pricing may be subject to change with additional work scope is added to the project or product substitution as directed by the City of Lake Elsinore or engineering firm Moleaer.
16. Period of performance is subject to availability of materials, engineering, and the city to approve the engineered design plans provided by Ballard.
17. Ballard to not be liable for the public mooring up to or boarding the barge.
18. Painting of existing, modified, and/or newly installed components is excluded from the Ballard pricing and scope.

### *General Notes, Clarifications, and Exclusions*

The following are made part of the contract and supersede any provisions thereof unless expressly agreed otherwise in writing by Ballard.

1. This proposal is contingent upon:
  - a. the parties reaching mutually agreeable terms and conditions under a fully executed written agreement, and
  - b. availability of personnel and equipment.
2. Ballard and Client acknowledge:
  - a. this proposal is submitted in response to an RFP or other request (i.e., schedule of rates) from Client and is based on assumptions and quantities specified therein, and
  - b. changes to assumptions and/or fluctuations in quantities may affect costs associated with providing the services contemplated herein.
3. Exclusions:
  - a. This proposal does not include, and Ballard will not be responsible for, any impact, delay or costs resulting from events or circumstances beyond Ballard's control, including but not limited to: acts of God; acts of the public enemy; acts of the Client, Project owner, or their respective agents; fires; floods; epidemics or pandemics; government orders or restrictions; strikes; severe weather; or supply chain issues such as scarcity of commodities or unusual delivery delay.
  - b. Any deviation in site conditions, scope of services, and/or deliverables specified herein will be considered a change and subject to negotiation and agreement in writing prior to commencement of work affected by any such change.

- c. Unless specifically stated otherwise, this proposal does not include any environmental controls or engineering services.
  - d. Ballard is not responsible for any expenses related to decontamination of equipment or reclamation of water or property contacted by contaminated materials at the work site during the Project. Any diving equipment or support equipment contaminated by radio nuclides, damaged, or destroyed by hydrocarbons, solvents, chemicals and/or other environmental conditions will be replaced at cost plus fifteen percent (15%) daily rental until the equipment is replaced.
  - e. Spoils, debris, water treatment/filtration and trash disposal are not included and are the responsibility of others, unless expressly included as part of Ballard's scope of work. Damaged equipment will become the property of the Client.
  - f. Cost of performance, payment or warranty bonds is not included. If required by Client, bonds will be furnished at cost plus fifteen percent (15%).
4. Client Responsibilities:
- a. Provide all permits required for the Project or performance of the services other than business or contractors' licenses required in the location of the Project.
  - b. Pay for any and all customs, import/export fees, foreign tax, duties, work permits, tariffs or any other related fees associated to the Project.
  - c. Provide sufficient access to and from the project site.
5. Safety & Compliance:
- a. Ballard dive teams are OSHA compliant and adhere strictly to ADCI regulations and guidelines. OSHA requires a minimum of a three (3) man properly trained dive team on each commercial diving project.
  - b. Ballard reserves the right to add more personnel as needed to safely perform the work depending on site conditions, depth of water, additional equipment, and any other conditions or circumstances that may affect safe performance of the work. Client shall be responsible for all resulting additional costs.
  - c. Ballard's supervisor/superintendent will have sole authority to determine if working conditions, including weather, allow for safe performance of the work. Weather conditions that may prevent safe performance of the work may include but are not limited to snow, ice, lightning, high winds/surf, extreme heat or cold, currents, and poor visibility caused by fog, snow, or heavy rain.
  - d. Ballard may take immediate action to prevent the loss of life or limb, to prevent undue suffering, or to prevent further property or environmental damage as necessary without prior written authorization from Client. Any action so taken will be documented and an appropriate change order issued as soon as reasonably practical thereafter.
6. All pricing is quoted and to be paid in U.S. Dollars.
7. This proposal is good for thirty (30) days.

***The terms and pricing of this proposal and any subsequent contract assume no impact from an infectious disease outbreak, including but not limited to the COVID-19 pandemic, whether directly or indirectly. Ballard Marine Construction's ability to comply with any schedule***



***requirement contemplated by this proposal is directly contingent on a lack of impact by an infectious disease outbreak. Such impacts could include but are not limited to: 1) any government or other public authority decision causing delay or impact; 2) any cost increase or lack of availability of personnel, materials, equipment and any other resources necessary for the performance of the work related to the proposal; or 3) any additional costs incurred to disinfect areas of the project site due to an infectious disease contamination or potential contamination. Ballard Marine Construction reserves its right to seek an extension of time and additional compensation if it or its subcontractors or suppliers are unable to maintain planned crew sizes due to an infectious disease outbreak, supply shortages or governmental restraints on business, travel or assembly or otherwise meet schedule requirements.***