

**MEMORANDUM OF AGREEMENT BETWEEN
LOS ANGELES SANITATION AND ENVIRONMENT AND
LOS ANGELES DEPARTMENT OF WATER AND POWER
RELATED TO THE HYPERION MEMBRANE BIOREACTOR PILOT
FACILITY AND STUDY**

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This Memorandum of Agreement (MOA) is made and entered into by and between the Los Angeles Department of Public Works, Bureau of Sanitation (LA Sanitation and Environment, or LASAN) and the Los Angeles Department of Water and Power (LADWP), referred to individually as "Party" and collectively as "Parties", for the Hyperion Membrane Bioreactor (MBR) Pilot Facility and Study to conduct a pilot study of MBR treatment of primary wastewater effluent at the Hyperion Water Reclamation Plant (HWRP). Data collected from the pilot study will be used to help inform the potential full-scale planning, design, and construction of an MBR treatment facility at HWRP to support development of Nitrified/Denitrified (NdN) tertiary recycled water supplies for LADWP's customers and potential partners.

RECITALS

WHEREAS, the Parties, and previously, the West Basin Municipal Water District (WBMWD), executed Agreement No. WR-17-3001 on January 18, 2018 to: conduct a pilot study in support of the development of 70 Million Gallons per Day (MGD) of NdN recycled water from HWRP to WBMWD's and LADWP's customers, including design and construction of a pilot-scale MBR facility to determine the treatment requirements of HWRP primary effluent; collect data from the pilot to help inform design of the 70 MGD facility; operate pilot study for one year to obtain data for the 70 MGD facility; develop a feasibility study for the 70 MGD facility; and develop an Environmental Impact Report for the 70 MGD facility; and

WHEREAS, the City of Los Angeles (City) in 2019 announced new local water supply goals that require a full-scale MBR facility at the HWRP, instead of a 70 MGD facility as initially planned; and

WHEREAS, as a result of the City's new local water supply goals and the need for a full scale MBR facility, a feasibility study and Environmental Impact Report for a 70 MGD facility is no longer required; and

WHEREAS, after its first payment of \$1 million under Agreement No. WR-17-3001, WBMWD opted to no longer participate further in that agreement or in this MOA; and

WHEREAS, the updated costs for the Hyperion MBR Pilot Facility and Study are exceeding the preliminary cost estimates in Agreement No. WR-17-3001; and

WHEREAS, Agreement No. WR-17-3001 expired on December 31, 2021, before completion of the Hyperion MBR Pilot Facility and Study; and

WHEREAS, the Parties desire to continue their cooperation in the design, construction and operation of the Hyperion MBR Pilot Facility and the implementation of the Hyperion MBR Pilot Study to refine the understanding of this treatment potential as well as to determine downstream impacts and develop design parameters for full-scale implementation of MBR treatment at the HWRP; and

WHEREAS, the Parties desire to enter into this MOA in order to complete the revised design, construction, and operation of the Hyperion MBR Pilot Facility and Study, define the roles and responsibilities of each Party, and implement cost sharing procedures.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1: TERMS AND CONDITIONS FOR THE DESIGN, CONSTRUCTION, AND OPERATION OF THE HYPERION MBR PILOT FACILITY

- 1.1 The Parties shall continue with designing, constructing, and operating the one MGD Hyperion MBR Pilot Facility to confirm the viability of the MBR process for producing NdN recycled water and to inform the development of design criteria and operating protocols for a full-scale MBR facility at HWRP in order to improve source water quality for subsequent production of advanced treated recycled water.
- 1.2 The Hyperion MBR Pilot Facility will be located at the HWRP, a property owned by LASAN.
- 1.3 The Parties shall collaborate to develop design specifications and test protocols, and LASAN shall contract with appropriate service providers or contractors to design, construct, and operate the Hyperion MBR Pilot Facility as further described in Attachment No.1. The parties understand that the Hyperion MBR Pilot Facility may employ temporary piping configurations and otherwise be adaptable to changing conditions during all testing pursuant to the Testing and Monitoring Plan.
- 1.4 The Parties shall share equally the cost of design, construction, and operation of the Hyperion MBR Pilot Facility and Study in accordance with Section 4.1. Design and construction costs shall include the cost of planning studies, plans, specifications, and for obtaining necessary permits for the Hyperion MBR Pilot Facility from all appropriate regulatory agencies, including but not limited to the City of Los Angeles - Department of Building and Safety, Regional Water Quality Control Board, State Water Resources Control Board Division of Drinking Water.

SECTION 2: TERMS AND CONDITIONS FOR THE HYPERION MBR PILOT STUDY

- 2.1 LASAN shall be the agency primarily responsible for the Hyperion MBR Pilot Study with participation from LADWP.
- 2.2 On October 1, 2018, LASAN, for the development and implementation of the Hyperion MBR Pilot Facility and Study, issued Task Directive No.12 under TOS SN-53 of LASAN's On-call Consultant Services Contract (C-124324) with Carollo Engineers, Inc. LASAN also issued Purchase Orders 200000302954, 200000302962, 200000303098, and 200000303120 with Koch Separation Solutions, Inc., Evoqua Water Technologies, LLC., Filmtec Corporation, and Suez

WTS Systems USA, INC., respectively. LASAN may retain additional consultant teams and/or contractors for the planning, design, construction, and operation of the Hyperion MBR Pilot Facility. LASAN shall be responsible for managing the contract documents, budget and schedule, permit applications, insurance requirements, compliance with City of Los Angeles labor policies, invoicing, and all other aspects of contract administration. All other contracts relating to this MOA, including the activities described in Section 3, shall be similarly managed by LASAN.

- 2.3 The Parties shall form a Technical Committee consisting of representatives from each Party to oversee the technical aspects of the project. The Technical Committee shall be involved in budget monitoring, schedule development, design review, procurement management, construction oversight, permit application, and the development of detailed testing protocols and water quality requirements and sampling procedures. The Technical Committee shall, at a minimum, meet on a quarterly basis to receive project updates by LASAN representatives. Each Party shall designate at least one representative to participate in the Technical Committee.
- 2.4 The Technical Committee shall develop decision making criteria agreeable to all members to facilitate decision making for the duration of the MOA. Disputes by the Technical Committee shall be resolved by the Management Oversight Committee.
- 2.5 The Parties shall form a Management Oversight Committee consisting of representatives from each Party, who shall not be members of the Technical Committee, to resolve any disputes by the Technical Committee and to approve final budgets and changes to funding requirements as the Hyperion MBR Pilot Facility testing protocols for the Hyperion MBR Pilot Study adapt and change. Determinations and decisions by the Management Oversight Committee must be unanimous. The Management Oversight Committee shall meet on an as-needed basis. Each Party shall designate at least one representative to participate in the Management Oversight Committee.
- 2.6 It is anticipated that the construction and commissioning of the Hyperion MBR Pilot Facility and all testing related to the Hyperion Pilot Study will be completed prior to December 31, 2027. The consultant or contractor conducting the Pilot Study will issue draft and final reports on the pilot tests to the satisfaction of the Technical Committee. The Technical Committee shall be responsible for reviewing the draft reports to provide comments to the contractor in a timely manner prior to finalization of the reports.
- 2.7 The Parties shall collaborate in working with regulatory agencies to address pertinent issues concerning the full-scale Hyperion MBR Pilot Facility that will produce NdN recycled water for non-potable reuse and for further treatment for potable reuse.

- 2.8 All Parties shall have immediate access to data generated from the Hyperion MBR Pilot Study. The Technical Committee shall oversee the use of the data for external purposes.

SECTION 3: INDEPENDENT ADVISORY PANEL

- 3.1 The Parties shall create an Independent Advisory Panel (IAP) for the Hyperion MBR Pilot Study through LASAN contracting with a third-party entity specializing in independent advisory panel management. The IAP shall consist of three to seven independent experts in wastewater treatment, potable reuse, and permitting. The independent entity shall facilitate selection of the independent experts by the Parties. The IAP shall be managed by the independent entity. The Technical and Management Oversight Committees will consult with the IAP during the design, construction, and operation phases of the Hyperion MBR Pilot Facility and consider the IAP's recommendations.
- 3.2 The Management Oversight Committee shall approve the budget and scope of the IAP and the independent entity and receive direct project updates from LASAN representatives on an as-needed basis.

SECTION 4: FUNDING

- 4.1 LASAN and LADWP shall each contribute to the project as outlined in Section 4.3. The total combined funding contributions from all Parties, including the \$1M contribution from WBMWD under Agreement No. WR-17-3001, shall be no more than \$30,000,000 (which includes contingency) as specified in Attachment No. 2. Party contributions already made under Agreement MBR WR-17-3001 count towards the maximum funding commitment of each Party. In no event shall the maximum total contribution by each Party exceed \$14,500,000.
- 4.2 Each Party may incur additional costs for contract administration, design review, meeting attendance, and pilot facility implementation and study development, which shall be borne individually by the Party incurring such additional costs. Each Party shall have no financial obligation to the other Party under the MOA, except as herein expressly provided.
- 4.3 The budget and cost breakdowns for the Hyperion MBR Pilot Facility and Study, along with the amount and timing of the Parties' respective contributions, are set forth in Attachment No. 2 and incorporated herein by reference. Attachment No. 2 consists of three tables. Table 1 summarizes the project budget including contingency. Table 2 establishes the contributions of the Parties for project costs, and Table 3 reconciles previous payments and establishes future contributions. LASAN will issue invoices for the required contributions, and LADWP will pay them within 60 days.

- 4.4 All Parties shall evaluate opportunities for outside funding for the Hyperion MBR Pilot Facility and Study and for any other eligible activities specified in this MOA. The amount of outside funding will reduce the funding obligation of each Party in proportion to the contributions made by each Party.
- 4.5 LASAN shall provide to LADWP, on a quarterly basis, a summary report on expenditures, including contractor proof-of-payment, progress photos, and the status of the Hyperion MBR Pilot Facility and Study.
- 4.6 LADWP has the right to audit any and all invoices, schedules, time sheets or other supporting documents during or upon termination or completion of the Hyperion MBR Pilot Facility and Study. Specific requirements for availability of records and audits are listed in Section 9 below.

SECTION 5: TERMS OF AGREEMENT

- 5.3 This MOA shall be effective from the day and year of execution by all Parties until the Hyperion MBR Pilot Facility and Study has been completed with the submittal of the final testing results and report to the IAP but no later than December 31, 2027.
- 5.4 This MOA does not in any way obligate the City of Los Angeles to develop a full-scale City-wide recycled water program, make water available to potential partners through exchange or other mechanism, allocate any Hyperion water to potential partners, or set any precedent for terms of any such allocation. Terms for any future allocation of recycled water from the HWRP shall be provided through a separate agreement between the Parties.
- 5.5 Upon mutual written agreement of all Parties, the MOA may be terminated in which case no further Section 4.3 funding obligation from the Parties will exist. Payment for any outstanding invoices and costs resulting from this MOA shall be made in full.

SECTION 6: INDEMNIFICATION

- 6.1 **LIABILITY.** It is the intention of this MOA that no Party shall be responsible for any liability which arises by reason of the negligent acts, errors, omissions or willful misconduct of any of the other Parties. Each Party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of any of the other parties and results thereof. Therefore, each Party agrees that it will assume all risk and liability for and to itself, its agents, contractors, or employees, for any injury to persons or property resulting in any manner from the conduct of its own operations, and the operations of its agents, contractors, or employees, under this MOA, and for any loss, costs, damage, or expense resulting at any time from any and all causes due to any act or acts, negligence, or the failure to exercise proper precautions, of or by itself or its own agents, contractors, or employees.

Additionally, as it relates to the Hyperion MBR Pilot Facility and Study and notwithstanding any established funding agreement, LASAN shall retain all liability for the acts, errors, omissions or willful misconduct of its officers, agents, employees, consultants, contractors, or the contractor's officers, agents, employees or subcontractors of any tier as it relates to the Hyperion MBR Pilot Facility's design, installation, operation, maintenance, or lack thereof.

The foregoing paragraphs shall survive for a period of two years from the expiration or termination of this MOA.

SECTION 7: AMENDMENTS

- 7.1 Following the execution of this MOA, any Party may request a modification to this MOA that the requesting Party believes is necessary due to unforeseen changed circumstances. No modification or amendment of this MOA or its Attachments shall be valid unless the said modification or amendment is in writing and is signed by all Parties to this MOA.

SECTION 8: ASSIGNMENTS

- 8.1 No Party to this MOA shall either voluntarily or by operation of law assign or transfer its right nor delegate its duties to any third party without first obtaining written consent of the other Party to the MOA. Such consent shall not be unreasonably withheld. No assignment hereto shall operate to discharge a Party to this MOA of any duty or obligation hereunder without the written consent of the other Party.

SECTION 9: AVAILABILITY OF RECORDS AND AUDITS

- 9.1 Upon 30 days written notice to the other Party, any Party may examine, inspect, copy, review, and audit any documents or records within the custody or control of the other Party upon which are based any changes or credits allowed under this MOA. Such examination of documents and records shall be carried out during normal business hours, at the site where said records are maintained in the normal course of business, at the expense of the inspecting Party and in conformance with general auditing standards and procedures. Following any inspection and/or audit pursuant to this Section, the inspecting Party shall within 90 days give written notice to the other Parties of any dispute or disagreement pertaining to the performance under this MOA.

LASAN shall maintain, and shall cause LASAN's consultants and/or suppliers as applicable to maintain, all records pertaining to the management of the MOA and performance of services pursuant to the MOA, including related subcontracts, in their original form, including but not limited to, reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all

costs claimed to have been incurred and services performed pursuant to the MOA. If LASAN, LASAN's consultants and/or suppliers are required to submit cost or pricing data in connection with the MOA, LASAN shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. All records shall be retained, and shall be subject to examination and audit by LADWP personnel or by LADWP's agents (herein after referred to as Authorized Auditors), for a period of not less than four years following payment made by LADWP hereunder or the expiration date of the MOA, whichever is later. LASAN shall make said records or to the extent accepted by the Authorized Auditors, photographs, microphotographs, etc., or other authentic reproductions thereof, available to the Authorized Auditors at LASAN's offices at all reasonable times and without charge. Authorized Auditors will have the right to reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by LASAN on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. LASAN shall not, however, be required to furnish the Authorized Auditors with commonly available software.

LASAN shall be subject, at any time within 60 calendar days following written notice, to audits or examinations by Authorized Auditors relating to all billings and to verify compliance with all MOA requirements relative to practices, methods, procedures, performance, compensation, and documentation.

Examinations and audits will be performed using generally accepted auditing practices and principles and applicable City, County, State and Federal government audit standards. For consultants, subconsultants, and suppliers that utilize or are subject to Federal Acquisition Regulation, Parts 30 and 31, et seq., accounting procedures, or a portion thereof, examinations and audits will utilize such information.

To the extent that the Authorized Auditor's examination or audit reveals inaccurate, incomplete, or noncurrent records, or records are unavailable, the records shall be considered defective.

Consistent with standard auditing procedures, LASAN will be provided 60 calendar days to review the Authorized Auditor's examination results or audit and respond to Authorized Auditor prior to the examinations or audit's finalization and public release.

If the Authorized Auditors' examination or audit indicates LASAN has been overpaid under a previous payment application, the identified overpayment amount shall be paid by LASAN to LADWP within 90 calendar days of notice to LASAN regarding such overpayment.

- 9.2 If applicable, in any contracts entered into after the execution of this MOA, LASAN shall require all contractors, consultants, and suppliers with whom it contracts for services required for the Hyperion MBR Facility and Study to include provisions from LADWP's General Condition (GC), Section 18, "Retention of Records, Audit, and

Reports” (Attachment No. 3) in their contracts, as well as provisions requiring each subcontractor to include GC-18 in any of its subcontracts. In addition, LASAN, their contractors, consultants, and/or suppliers, shall also include the following language in each contract:

“The Los Angeles Department of Water and Power (LADWP) is a third-party beneficiary of the foregoing audit provision. The benefits of the audit provision shall inure solely for the benefit of LADWP. The designation of LADWP as a third-party beneficiary of the audit provision shall not confer any rights or privileges on LASAN, contractors, consultants, or any other person/entity.”

If an examination or audit undertaken pursuant to the Retention of Records, Audit, and Reports provision of GC-18 reveals that LADWP’s overpayment to the Project Consultant/Contractor is more than 5 percent of the billings reviewed, the Project Consultant/Contractor shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit. Such examination or audit expenses and costs shall be paid by the Project Contractor/Consultant to LADWP within ninety (90) calendar days of notice to the Project Contractor/Consultant of the costs and expenses.

- 9.3 LASAN has, for the development and implementation of the Hyperion MBR Pilot Facility and Study, issued Task Directive No.12 under TOS SN-53 of LASAN’s On-call Consultant Services Contract C-124324 with Carollo Engineers, Inc. on October 1, 2018, and Purchase Orders 200000302954, 200000302962, 200000303098, and 200000303120 with Koch Separation Solutions, Inc., Evoqua Water Technologies, LLC., Filmtec Corporation, and Suez WTS Systems USA, INC., respectively. The Parties agree that, in place of Section 9.1, the audit provisions of the LASAN’s contractors, consultants and/or suppliers task orders and purchase orders shall govern the auditing rights and protocols as to such that LADWP shall have all of the rights set forth in the task orders and purchase orders as are provided to the “CITY” thereunder, and to the extent necessary, LASAN will, at LADWP’s direction, enforce such rights.

- 9.4 The provisions of this section shall survive expiration or termination of the MOA.

SECTION 10: OTHER TERMS

- 10.1 A Party’s failure to enforce any provision of the MOA shall not be construed as a general waiver or relinquishment on its part of any portion of this MOA.
- 10.2 Consistent with Section 6, in no event shall any Party be liable to any of the other Parties for any special, consequential, or indirect damages (including by way of illustration, lost revenues and lost profits) arising out of this MOA or any obligation arising thereunder, whether an action for or arising out of breach of contract, tort, indemnity or otherwise.

10.3 Any written notice under this MOA shall be deemed properly given if delivered in person or sent by registered or certified mail, postage prepaid, to the person specified below unless otherwise provided for in this MOA:

a. If to LASAN:

Hyperion Water Reclamation Plant
12000 Vista Del Mar
Playa Del Rey, California 90293-8504
Attention: Hyperion Plant Manager

b. If to LADWP:

Los Angeles Department of Water and Power
111 North Hope Street, Room 1336
Los Angeles, California 90012
Attention: Director of Water Engineering and Technical Services

10.4 Any of the Parties may, by written notice to the other Party, change the name or address of the person to receive notices pursuant to this MOA.

10.5 This MOA may be executed in counterparts, each of which may be deemed an original, and all of which collectively shall constitute a single instrument. Photocopies, facsimile copies, and PDF copies shall have the same force and effect as a wet ink original signature.

10.6 Each person signing this MOA on behalf of a Party hereto warrants and represents that he or she has authority to sign on behalf of the said Party, and that this MOA has been validly authorized and constitutes a legally binding and enforceable obligation of the said Party.

IN WITNESS WHEREOF, the Parties thereto have executed this Memorandum of Agreement to be executed by their duly authorized representatives.

DEPARTMENT OF PUBLIC WORKS
BUREAU OF SANITATION
OF THE CITY OF LOS ANGELES BY
BOARD OF PUBLIC WORKS COMMISSIONERS OF
THE CITY OF LOS ANGELES

By: _____
Aura Garcia
President, Board of Public Works

Date: _____

By: _____
BARBARA ROMERO
Director and General Manager

Date: _____

ATTEST:
HOLLY L. WOLCOTT, City Clerk

By: _____
Deputy City Clerk

Date: _____

IN WITNESS WHEREOF, the Parties thereto have executed this Memorandum of Agreement to be executed by their duly authorized representatives.

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS

By signing below, the signatories attest that they have no personal, financial, beneficial, or familial interest in this contract.

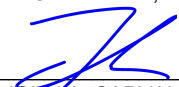
By: _____
JANISSE QUIÑONES
Chief Executive Officer and Chief Engineer

Date: _____

By: _____
CHANTE L. MITCHELL
Board Secretary

Date: _____

APPROVED AS TO FORM AND LEGALITY
HYDEE FELDSTEIN SOTO, CITY ATTORNEY
DECEMBER 12, 2024

BY _____

JOHN A. CARVALHO
DEPUTY CITY ATTORNEY

ATTACHMENT NO. 1
HYPERION MBR PILOT FACILITY AND STUDY DESCRIPTION

The Hyperion MBR Pilot Facility shall consist of three packaged units downstream of one common bioreactor consisting of the vendor's smallest, full-sized membrane separation cassette/rack for the purpose of achieving the following objectives:

- Scalability for a full-scale MBR facility at HWRP
- Determine the viability of the MBR process for treatment of HWRP primary effluent
- Develop criteria for selecting vendors for the full-scale MBR facility at HWRP
- Provide a design basis for the full-scale MBR facility at HWRP
- Develop the basis for capital and O&M cost estimates
- Determine comparative vendor performance
- Initiate regulatory review for ultimate approval of MBR pathogen log removal credits by Division of Drinking Water (DDW)
- Test the system's performance under varying conditions to determine the process stability and membrane integrity
- Evaluate downstream reverse osmosis (RO) performance and quantify impacts on operations and maintenance (O&M) of the RO systems and regulatory compliance concerning implications of RO concentrate discharge into the Santa Monica Bay.
- Simulation of sludge/membrane interaction
- Means of integrity monitoring
- Duplication of air scour impacts
- Reproduce mechanical systems' impacts

ATTACHMENT NO. 2

TABLE 1: Hyperion MBR Pilot Facility and Study Budget Breakdown

Item	Estimated cost	Source
Procurement and installation of facility	\$21,040,000	Board Report for Board of Public Works (February 2024)
Consultant support through July 2024	\$4,516,320	Task Directive 12 between LASAN and Carollo
Independent Advisory Panel	\$280,000	Estimate from National Water Research Institute
Contingency	\$4,163,680	To be determined. Potential uses include: Outsourcing of laboratory analyses; Continuation of consultant support after July 2024; equipment replacement and repair
Total	\$30,000,000	

TABLE 2: Cost Share Distribution

Agency	Share under expired WR-17-3001	Additional cost-share under this MOA	Total
LASAN	\$4,400,000	\$10,100,000	\$14,500,000
LADWP	\$4,400,000	\$10,100,000	\$14,500,000
WBMWD	\$1,000,000	\$0	\$1,000,000
Total	\$9,800,000	\$20,200,000	\$30,000,000

TABLE 3: Invoice and Reimbursement Schedule and Status

Component	Amount	Status		
		WBMWD	LADWP	LASAN
Initial deposit (WR-17-3001)	\$3,000,000	Invoice #1 for \$1,000,000 (paid)	Invoice #1 for \$1,000,000 (paid)	Invoice #1 for \$1,000,000 (paid)
Expenditures through Dec 31, 2021 less initial deposit (WR-17-3001)	\$4,626,190.88	NA	Invoices # 2 and 3 for \$2,313,095.44 (paid)	Invoices # 2 and 3 for \$2,313,095.44 (paid)

Remaining balance of WR-17-3001	\$2,173,809.12	NA	LASAN will send Invoice #4 to LASAN and LADWP for \$1,086,904.56 each upon execution of this MOA and after total actual expenditures have exceeded \$9,800,000.	
Future other reimbursements (this MOA)	Up to a maximum of \$20,200,000	NA	<p>LASAN will send Invoice #5 to LASAN and LADWP for \$5,050,000 each upon execution of this MOA and after total actual expenditures have exceeded \$19,900,000.</p> <p>For the remaining balance and upon completion of the project, LASAN will send Invoice #6 to LASAN and LADWP. The invoice amount for each Party is 50% of the total actual expenditure less \$19,900,000. The amount of Invoice #6 for each Party cannot exceed \$5,050,000.</p>	
	Project budget ceiling: \$30,000,000	WBWMD share: \$1,000,0000	LADWP share: \$14,500,000	LASAN share: \$14,500,000