

**SERVICES AGREEMENT**

**BETWEEN THE**

**CITY OF SAN DIEGO**



**AND**

**ADS CORP**

**TO PROVIDE WASTEWATER FLOW MONITORING AND  
EVENT NOTIFICATION SERVICES, SOFTWARE, AND  
EQUIPMENT FOR CITY OF SAN DIEGO SEWER SYSTEM**

## SERVICES AGREEMENT

This Services Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and ADS CORP (Contractor).

### RECITALS

City wishes to retain Contractor to provide wastewater flow monitoring and event notification services, software and equipment for City's sewer system as further described in the Scope of Services (Services), attached hereto as Exhibit A.

Contractor has the expertise, experience, and personnel necessary to provide the Services.

City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Services.

This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(e) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

### ARTICLE I CONTRACTOR SERVICES

**1.1 Scope of Services.** Contractor shall provide the Services to City as described in Exhibit A, Scope of Services, which is incorporated herein by reference.

**1.2 Contract Administrator.** The Public Utilities Department (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Surraya Rashid, Deputy Director  
Engineering and Program Management Division  
Public Utilities Department  
City of San Diego  
(858) 654-4112  
[SRashid@sandiego.gov](mailto:SRashid@sandiego.gov)

**1.3 General Contract Terms and Conditions.** This Agreement incorporates by reference the General Contract Terms and Conditions, attached hereto as Exhibit B.

**1.4 Submittals Required with the Agreement.** Contractor is required to submit all forms and information delineated in Exhibit C before the Agreement is executed.

**ARTICLE II  
DURATION OF AGREEMENT**

**2.1 Term.** This Agreement shall be for a period of six (6) months beginning June 23, 2020 through December 22, 2020. Unless otherwise terminated, this Agreement shall be effective until completion of the Scope of Services or **December 22, 2020**, whichever is earliest. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

**2.2 Effective Date.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40.

**ARTICLE III  
COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor for performance of all Services rendered in accordance with this Agreement in an amount not to exceed \$744,401.58 or the amount referenced in the Purchase Order.

**ARTICLE IV  
WAGE REQUIREMENTS**

**4.1** By signing this Agreement, Contractor certifies that he or she is aware of, and agrees to comply with, the wage provisions described in Exhibit D, Wage Requirements, which is incorporated herein by reference, before commencing services.

**ARTICLE V  
INSURANCE**

**5.1** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors, as described in Article VII of Exhibit B, General Contract Terms and Conditions, attached hereto.

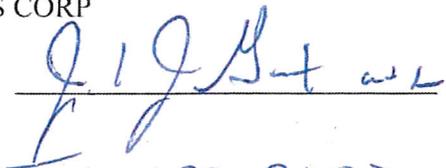
**ARTICLE VI  
CONTRACT DOCUMENTS**

**6.1 Contract Documents.** This Contract and the aforementioned exhibits constitute the Contract Documents. The Contract Documents completely describes the Services to be provided.

**6.2 Counterparts.** This Contract may be executed in counterparts, which when taken together shall constitute the single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

ADS CORP

By: 

Date

June 23, 2020

CITY OF SAN DIEGO

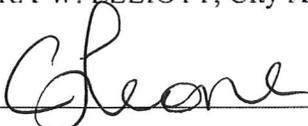
By: 

Director, Purchasing & Contracting

Date

Approved as to form this 24<sup>th</sup> day of June, 2020.

MARA W. ELLIOTT, City Attorney

BY: 

Deputy City Attorney

## EXHIBIT A

### Scope of Work

#### **1.0 General**

##### **1.1 *Flow Monitoring Program:***

The City of San Diego's (City) Public Utilities Department (PUD) manages and operates the wastewater collection and treatment system for the Metropolitan area of southwestern San Diego County. This system collects and treats the wastewater generated by a regional population of 2.3 million, producing approximately 147 million gallons of wastewater per day. This system, referred to as the Metro System, is comprised of 16 cities and districts (Participating Agencies (PA)) including the City of San Diego. Each Participating Agency maintains its own wastewater collection system, which ties into the City wastewater system. The City also conveys and treats wastewater for other large facilities including state and county prisons and military installations.

The flow monitoring program will collect data from approximately 162 sites. The major functions for the flow monitoring program are:

- (1) Event Notification System (ENS)
- (2) Participating Agency Billing and Reporting
- (3) Sewer Modeling

These functions require real time and periodic data processing, analysis and reporting of the wastewater flows. The Contractor shall continue to provide flow monitoring equipment parts, sensors, battery replacements, necessary software, data analysis, reporting, and maintenance services in support of these functions.

The City serves a wide variety of wastewater generators, including military installations, correctional facilities, industrial facilities and residential areas. The contractor will be required at some locations to have their service personnel pass security clearance to access flow monitors, such as military installations.

##### **1.2 *Locations of the Monitor Sites:***

Monitor sites are located throughout southwestern San Diego County and are sited in canyons, military installations, major roadways, streets, parking lots, river banks and at or adjacent to sewer pump stations. Most installations are inside manholes that may range in depth from 3 to 30 feet. All confined space entries are to comply with Cal OSHA and PUD entry requirements. The majority of the sites require open channel monitoring equipment, however some sites (e.g. pump stations or low flow sites) may require alternative monitoring equipment. The primary transmission of data and signals will be via cellular (wireless) phone signals, however in a few cases, may utilize telephone landline connection, or may require the ability to process 4-20 mA signals for use at pump stations.

The configuration of the manholes and piping at the manholes will vary from location to location. Anticipated conditions may include drop manholes, bends,

variations in materials, offset joints in the piping, pre-existing flumes or weirs, offset entry hatches requiring personnel to move away from the entry location to install and maintain sensors or equipment and high flow and low flow conditions. Sampling is conducted at some monitor site locations. Some monitor sites are built and maintained by the PAs or may be located within military or other restricted facilities. The City shall coordinate with PAs and other restricted facilities for the conditions or access but shall not be responsible for these monitor sites. The City shall be advised (via e-mail with photos) of any conditions or situations that impact the collection and reliability of flow data.

## **2.0 Equipment and Software Requirements**

The Contractor shall provide to the City equipment and software that meet the following requirements:

### **2.1 *Equipment Requirements***

- a. The minimum requirements are that monitors are battery powered; have telemetry capabilities for remote data access and diagnostics; provide depth and velocity readings in English system units suitable for use in performing accurate flow rate calculations; have sufficient on-board memory storage to prevent data loss; and can withstand extreme sewer environmental conditions (wastewater composition, surcharge conditions and the presence of vectors in the system). Sensors must measure accurately in a variety of flow conditions (e.g. low flow, pump station activity, surcharge conditions, reverse flows, high flow, etc.) and small to large pipe diameters.
- b. The Contractor shall provide equipment specifications and identify any equipment limitation that may impact data reliability or accuracy.
- c. The installation shall provide velocity, depth and flow rates (Q), information.
- d. The installation shall be configured so that redundancy is able to insure accurate flow data in case of failure of a system component.
- e. Monitors shall be Intrinsically Safe (NEMA 4x certified) which meets Class 1, Div 1 and Group C and D ratings, and shall be certified intrinsically safe for confined spaces requiring explosion proof operation by the Contractor. Sensor(s) shall meet North American directives for equipment that is to be installed in potentially explosive environments, and the Contractor shall provide certification that the units meet applicable requirements for Electromagnetic Compatibility (Emissions and Immunity).
- f. The equipment must: provide event notification immediately upon detection of critical alarm condition; (depth of flow exceeds pipe diameter or depth is less than the value set for low flow alarm parameter); record data at intervals between 5 to 15 minutes; and capable of self-uploading data at least every 30 minutes or upon remote call up.
- g. The accuracy of the depth and velocity sensors shall be within  $\pm 1\%$  for depth and  $\pm 2\%$  for velocity. The Contractor shall certify the accuracy of all sensors.

- h. The depth and velocity sensors shall be verified at the monitor site so that the average of the set of readings used to verify the sensors are within 5% of the actual measured depth or velocity.
- i. The Contractor shall maintain an adequate inventory of replacement parts in San Diego throughout the duration of this agreement. The Contractor shall advise the City if replacement parts exceed one-week delivery.
- J. The flow monitor at ELCAJON\_EC2B (EC2B) will provide flow information to divert flow to both the trunk sewer and pump station during high flow storm events. The flow monitor at this location shall provide a 4 to 20 ma output signal at the flow monitor that shall be connected to the existing cable routed to the pump station controls located about 100 yards from EC2B.

## **2.2. *Comprehensive Service Program***

In lieu of an equipment warranty, the Contractor shall provide a comprehensive service program for the equipment provided under this contract. The program shall include:

- a. Onsite and remote diagnostic inspection of all equipment and materials.
- b. Repair, replacement, cleaning and preventive maintenance services for the equipment, including sensors, cables, monitors and telemetry equipment, and materials, including battery and desiccant replacement, necessary to keep the equipment operating in accordance with the manufacturer's specifications and the requirements of this contract.
- c. The service shall be performed in accordance with Section 5.0 of this Scope of Work.

## **2.3 *Software and Server Requirements***

- a. Software is to be Windows and/or web based using Google<sup>®</sup> Chrome<sup>®</sup> or Safari<sup>®</sup> browsers, fully capable of meeting the City's requirements at project inception.
- b. Software upgrades will be provided to the City free of charge.
- c. Software must allow for remote access to flow monitoring data on a real-time basis and on a periodic basis.
- d. Software shall provide remote data access, reporting, data analysis and editing capabilities with the ability to:
  - 1. Review data in a graphical format for all monitor sites with a user defined interval for time and date, (5 minute, 15 minute, 30 minute, hourly, daily, weekly and monthly time periods).
  - 2. Easily produce graphs and tabular reports in 5 minute, 15 minute, 30 minute, hourly, daily, weekly and monthly time periods.
  - 3. Electronically produce tabular reports (i.e. "batch mode" reports for multiple sites using the same entities and format), in various time increments (5 min, 15 min, 30 min, hourly, daily, weekly and monthly) with different data entities, i.e. final flow rate, average depth, average velocity, etc.

4. Setup groups of monitoring sites and view groups graphically with the same data entities, i.e. depth, velocity, final flow rate
5. Make minor data changes (toggle off/on the data points) to data without deleting any original data points.
6. Remove any drips or spikes in depth and velocity that don't follow the hydraulic condition.
7. Allow visibility of all raw data points including the edited data points.
8. View at a glance (e.g. a data table) the dates and offsets that were applied to each monitor.
9. View all data history for each monitor site.
10. Output data to ACCESS database and/or EXCEL spreadsheet.
11. Date stamp time using a 24-hour clock and adjust to PST and PDT. Time stamps shall be consistent throughout the system.

**12. Provide Web Application Programming Interface (API) Connections in JavaScript Object Notation (JSON) format**

- e. The Contractor's software and hardware shall be capable of providing data in English measurement units.
- f. The software and servers shall be capable of providing data access and processing to City and PA staff (up to 50 users).

### **3.0 Event Notification System**

#### **3.1 Event Notification System Requirements (ENS)**

The City's flow monitoring program maintains approximately 162 flow monitoring sites. The ENS is intended to provide alarm information, which will allow the City to dispatch crews to avert or minimize wastewater spills. The ENS is configured to monitor 90% or more of "flow weighted length" of the City's 340 miles of trunk sewers (15 inches in diameter or greater), including all canyon trunk sewers. One hundred twenty three (123) of the flow monitor sites are used for the ENS, also referred to as the Flow Metering Alarm System (FMAS). The ENS is intended to provide real-time early warning of potential and/or existing wastewater overflows based on flow data collected from the designated alarm monitors.

The Contractor shall implement an ENS according to the following requirements.

- a. Provide to the City the specifications for desktop computers stationed at the City's offices to receive and view ENS related data and alarm information.
- b. Provide wireless and/or use landline communication system to collect the flow data (depth, velocity, etc.) and to process the data on a real-time basis for the detection of any potential and/or existing overflows.
- c. Provide ENS software applications to analyze the real-time flow data collected from the monitor sites and to issue alarms via on-screen warnings, s, pagers, e-mails, etc. for any flow anomalies caused by the potential and/or existing overflows at either the upstream or downstream side of the monitors.
- d. The ENS shall be able to detect any low flow anomaly, which may be indicative of an overflow condition upstream of the monitor, and any high-

level anomaly, which may be indicative of flow backup downstream of the monitor.

- e. The software application shall detect any reduction in flow of more than 25% of the average dry weather flow measured by the monitor located downstream of a suspected spill location.
- f. As a requirement for the Low Flow Alarm System, the ENS must be capable of detecting and notifying City staff within one hour of reductions in flow of 25% or more of the average dry weather flow during both DRY and WET weather conditions.
- g. As a minimum, the ENS must be capable of detecting and notifying City staff within one hour of the increase of flow depth exceeding a pre-determined level (e.g. pipe crown) during both DRY and WET weather conditions.
- h. The software applications must be capable of conducting automated QA/QC processes to provide a quality assured screening of all alarm potentials and to minimize false alarms induced by erroneous data, data fluctuations, equipment malfunctions and other system defects.
- i. The Contractor shall perform regularly scheduled maintenance of the software and hardware of the ENS in order to provide alarming data for not less than 95% of the time system wide. The Contractor shall acknowledge issues (identified by the City and/or Contractor) related to the ENS components (including sensors, cables, communication connections, monitors, computer hardware and software) within 24 hours for ENS monitors and shall guarantee completion of all repair/maintenance within a 48-hour time period, excluding weekends.
- j. The Contractor's ENS shall provide accurate and reliable overflow detection.
- k. The Contractor shall stock the parts locally and provide 24-hour supervisory support to the City.
- l. The Contractor shall provide communication protocols, LTE-M, CDMA, landline, etc, according to the site-specific conditions.

### **3.2 ENS Monitoring Services**

The Contractor shall provide web-based services to monitor the ENS and provide daily reports (refer to Section 6.3) to the City during the following periods:

Weekends (Saturday and Sunday) and City Holidays – 24-hour coverage

Weekdays (Monday thru Friday)

## **4.0 New Site Installation & Acceptance**

### **4.1 Installation**

The Contractor is responsible for accurate flow measurement. The City will provide a Site Document (S-Doc), which will provide monitor site location and configuration information, to the Contractor for reference only. The Contractor shall correct and update the monitor and site information.

As part of the installation the Contractor shall prepare a field confirmation document (F-Cal). The field confirmation shall demonstrate that the installed

sensors are installed and verified so that the depth, velocity and flow volume Q, are all within the accuracy identified in Section 2. The field confirmations that are not within the required accuracy for all measurement parameters shall be repeated and or sensors shall be replaced and verified so that the field confirmation results are within the required accuracy. The field confirmations at the monitor sites shall take place during a variety of flow conditions; low flow, high flow and average flow conditions, so that the Contractor is able to demonstrate to the City that the installed sensors are reliable over a wide range of flow conditions.

The City shall specify the sequence/schedule of new monitor site installations and confirmations.

- a. The Contractor shall investigate site locations and configurations prior to monitor installation. The Contractor shall confirm that the monitor site is a suitable site or identify an alternative site.
- b. Submit the scheduled installation time and date to the City, 5 working days in advance of the planned installation. The City may determine the day and or the time of day for the confirmation of any monitor site.
- c. Install the sensors, cables, monitors and antenna/communication service.
- d. Verify/correct and update the S-Doc to identify the current site conditions.
- e. Field verify the installed sensors
- f. Document the site condition/installation with digital photos.
- g. Submit to the City, in electronic format, and post on line if available, the S-Doc, F-Cal and photos within 5 working days of the installation.

#### **4.2 *Site Acceptance Procedure***

The submitted S-Doc, F-Cal and photos must be correct and available electronically for review and downloading by City and PA staff. The City will proceed with the acceptance of the monitor site installation based on the following criteria:

- a. The site acceptance package submitted by the Contractor shall include the S-Doc, F-Cal, site photos, and flow data for the 30 days evaluation period, the alarm history report for the site for the 30 days evaluation period and flow information for the 30 days period for the site.
- b. The Contractor shall submit to the City for approval a minimum of 30 continuous days of flow data. The edited, final (DFinal, VFinal, QFinal) data within the 30 day evaluation period must be continuous and shall show reliable, repeatable and consistent data (no fouled data, no sensor malfunctions, no loss of connectivity or data) for a time period of at least 95% of the 30 day evaluation time period.
- c. The City will verify the Contractor's acceptance submittal based on the available resources such as the Contractor's monitor readings, City/third party temporary monitors, City's field verification, the City's historical data or the Contractor's own historical data (if it's a second submittal for the same site), Manning's calculation, Hydraulic Rating Coefficient (HRC), knowledge of current population within monitoring drainage basin, and calculation of the flow balance among multiple monitor locations.

- d. The City may request the Contractor to participate with the City in performing monitor site verifications for up to 10% of the monitor sites included in the contract. The monitor site verifications may occur at various times of the day or night during high, medium or low flow periods.
- e. The City may request the Contractor to perform a site profile and submit a site profile report for up to an additional 10% of the monitor sites included in this contract. The monitor site profiles may occur at various times of the day or night during high, medium or low flow periods.
- f. City staff shall carry out a site inspection after the acceptance package is submitted and prior to acceptance.

## **5.0 Monitor Maintenance and Service**

After monitor acceptance, the Contractor shall maintain the same level of data quality (reliable, repeatable and consistent). The City will continue to verify the monitor data based on the same criteria described in item 4.2c above. If, for any reason, the data quality is not maintained, the Contractor shall provide solutions to resolve the data quality issue. If the quality is not improved, the City shall have the option to reject and stop payment for the monitor site. The monitor site will then have to be resubmitted for acceptance per 4.2.

The maintenance and service shall include the following:

- a. Staffing; The Contractor shall maintain in San Diego a permanent field service crew dedicated to the monitor sites identified under this contract. The Contractor shall identify a person, who is located on a full-time basis in San Diego, as the Contractor's primary contact for the supervision and scheduling of the field service crew. Written notification of any change, either temporary or permanent, of the primary contact must be provided to the City at least 5 working days in advance of the change. The primary contact shall be on call 24 hours per day, 7 days a week and the service crew shall be available to service the monitor sites in accordance with the requirements of this contract.

In addition, the Contractor shall acknowledge issues (identified by the City and/or Contractor) related to the non ENS monitor site components (including sensors, cables, communication connections, monitors, computer hardware and software) within 24 hours and shall guarantee completion of all repair/maintenance within an additional 72-hour time period, excluding weekends. Refer to Section 3.1.i, for the time requirements for ENS monitors.

- b. Planning; the Contractor's primary contact shall notify the City of any maintenance/service activities for the following workday and report on conditions and activities from the previous workday. The City shall notify the Contractor when mainline or Pump Station wet well cleaning is planned.

- c. Diagnostics; The Contractor shall monitor the data being transmitted from the monitor sites and shall carry out a diagnostic inspection of the data twice weekly to ensure that the monitor site is connected to the flow monitoring system and that the data that is provided is reliable and consistent.
- d. Repair; The Contractor shall repair and carry out all preventative maintenance services needed for the reliable operation of the monitor sites. The repair and maintenance services shall include but is not limited to; communication links, sensors, cables, power sources (batteries), monitors and cards, desiccants and all other components necessary for the monitor sites to provide reliable and consistent data to the City. Manual data collection shall be provided weekly for sites with data transmission problems, the data shall be posted/reported within 2 working days of collection.
- e. Routine Site Service; Field confirmations will be completed in accordance with the Contractor's needs-based confirmation procedure, or at a minimum of once a year and may coincide with a service call. The term "confirmation" is used to describe the verification that the flow monitor is properly configured to its environment and the pipe curve is stable and validated by two independent field measurements. If no service calls are required, the contractor shall carry out a field confirmation (new F-Cal and S-Doc verification) within (12) months of the last monitor confirmation. A field verification may also be required if the City determines that the data is not reliable.
- f. Access to Monitor Sites; The City may be unable to control the access to the monitor sites. The monitor sites are located at a variety of locations throughout southwestern San Diego County. Some monitor sites may have secured and or sealed manhole covers to reduce odor emissions, these will require un-securing (bolt or cross bar removal) unsealing and securing and resealing after accessing the monitor sites. The Contractor is responsible to comply with the requirements of the owner of the facility where monitor sites are located. The Contractor shall not be reimbursed for the cost of a crew that is unable to access a monitor site.
- g. Documentation;
  - 1). Access to completed service and maintenance reports for all monitor sites shall be provided to the City, within 2 working days of the site visit, in electronic format –through an easily accessible web site.
  - 2). Access to previous service and maintenance reports for each monitor site, shall be available to the City in electronic format through an easily accessible web site.
  - 3). Access to all field confirmation forms and other site documents (i.e. installation, repairs and replacements, meter verifications, etc.) including all historical field confirmations and other documents shall be available to the City through an easily accessible web site or be a downloadable spreadsheet.
  - 4). Provide service crew's hours of operation for workdays, holiday and weekend work schedules, if needed, and emergency contact telephone numbers.

## **6.0 Reporting and Posting Information**

Data and related information must be available to the City and PA staff. The Contractor shall provide a system that permits authorized staff to view, download and print information at any time.

### ***6.1 Staffing***

- a. The Contractor shall provide the full-time services of a trained and knowledgeable full-time data analyst, who shall be available during normal work (0800 hours to 1600 hours PST/PDT) hours to review data, resolve issues and answer questions.
- b. The data analyst shall be available as-needed to provide ad-hoc analysis, editing and reporting during critical time sensitive events (e.g. rain events, lab requests, facility shutdowns, etc.).
- c. The Contractor's data analyst shall be available for up to 8 hours, bi-weekly, to participate in bi-weekly person to person meetings at City facilities.
- d. The data analyst shall verify and certify that raw data (depth, velocity and Q), for each monitor site, is accurate, unchanged, continuously on-line, and is accessible by City and PA staff on a daily basis.

### ***6.2 Monitor Site Maintenance Reports***

The Contractor shall provide a system to record and track service records for each of the monitor sites, refer to Section 5.0g. The system shall provide online data with the following information:

Site name

Work order number

Description of the problem or service at the monitor

Date of site visit

Date of completion for any work performed (including confirmation data when sensors are replaced)

List of parts used

Name of the person requesting work to be performed

Name of the person who performed the work

The Contractor shall maintain this data base in chronological order and provide historical data for each monitor site that has been serviced.

### ***6.3 ENS Report Requirements***

The ENS reports shall conform to the requirements identified in Section 3.0. The ENS report system shall be capable of being viewed, downloaded and printed at all times and shall include the following:

- a. An online ENS alarm screen that shall provide the following information in chronological order:
  - The identification of the site in alarm with a link, in a map and tabular format, that will take the user to a screen that will allow the user to construct a hydrograph to investigate the alarm condition.
  - Identify the type of alarm, i.e. Hi Level, Low Flow, or Battery Warning
  - Identify the time of the alarm

Identify the time the alarm was acknowledged

Identify the name of the person acknowledging the alarm

Identify the time the alarm cleared

Provide a reset/refresh button to remove the alarm from the ENS screen. If the alarm does not clear, the Contractor shall remedy the problem immediately.

Passwords shall to be assigned to City staff to allow staff to access and use the ENS Alarm Screen.

- b. An Alarm History Report shall be created to report historical alarm data. The data shall be maintained in chronological order for each monitor site. This information will be available to everyone having access to the ENS alarm screen.
- c. The Contractor shall provide a system which allows City staff to quickly review real time hydrographs at monitor sites to show at least three days of flow data (depth, velocity, flow quantity and battery level). The data shall show no less than three-hour increments of flow data. This information will be reviewed daily by City staff to assist in determining the operational status of each monitor site.

#### ***6.4 Engineering / Sewer Modeling Reports***

The City will use the flow data to model flows to evaluate the wastewater collection system's capacity for a variety of flow conditions. The data recorded at the monitor sites are the primary data used to carry out these evaluations. As specified in Section 2.3 the Contractor shall provide a system that will post data and permit the City to access that information in a variety of configurations. As a minimum the following information for each monitor site shall be online and available for use by the City for engineering and sewer modeling.

- a. Raw Depth and Velocity (un-edited data measured by the monitor sensors)
- b. Calculated Flow (Q) based on the Continuity Equation
- c. Provide the ability to view, in a graphical format, one data type (i. e. Depth) versus another data type (i.e. Q or velocity).
- d. Provide the ability to simultaneously download multiple monitor sites in a tabular CSV, txt, excel file format(s), and Web API's.
- e. Provide the ability to view and download data with user-defined intervals for time and date (5 minutes, 15 minutes, daily, weekly, monthly, yearly).

### **7.0 Training**

#### ***7.1 Training for Online Access***

If requested, or as part of a new software platform release, the Contractor shall provide training at City facilities for City and PA staff, which will allow staff to access, download and analyze flow data from the monitor sites. The Contractor shall provide an outline and handouts for each training session. The Contractor shall allow for 16 hours of training per month for the first six (6) months of the contract and eight (8) hours per month for the remainder of the contract duration. The training sessions shall not exceed four (4) hours per session.

**7.2 Training for Monitor Service and Maintenance**

If requested, the Contractor shall provide training to City staff for monitor service, replacement, repair and equipment verification. The Contractor shall provide an outline; handouts; operating, repair and parts manuals for the training. The Contractor shall provide a trainer who will train at City facilities and accompany City staff to the monitor sites to demonstrate the proper procedures for servicing, repairing, replacing and verifying the sensors and monitors. The trainer shall instruct, observe and evaluate the performance of City staff to carry out the maintenance activities at the monitor site.

If requested, the Contractor shall perform up to 10 training sessions throughout the duration of the contract. The training will not exceed 2 days per session.

**8.0 Safety**

The Contractor shall comply with the requirements of Cal OSHA, and the City of San Diego PUD Safety requirements. The Contractor shall identify a safety representative who is located at San Diego to ensure compliance with safe working procedures. These duties shall include but not be limited to: site inspections, incident investigation, employee training, preparation and updating site specific safety and health plans, preparation of Job Safety Analysis (JSA), enforcement of safety requirements, and reports as required by Cal OSHA and the City.

The City will provide the Contractor a no-fee blanket encroachment permit to access monitor sites on City streets, in alleys and easements.

**9.0 Temporary Monitor Sites**

If requested, the Contractor shall install ten new temporary ENS monitors (see Table 1) and relocate those 10 monitors each year. All new temporary monitors are to be incorporated into the ENS. Table 1 provides a list of trunk sewers that are proposed for temporary monitor installation in the first year. Future temporary monitor sites will be evaluated and identified on an annual basis with those locations identified in May of each year. The proposed manhole ID is preliminary and provided here as a general location. The installation and acceptance of the ten new temporary monitors shall be completed within 60 days of the Notice to Proceed date.

**Table 1 Temporary Monitors**

Trunk #	Name	Estimated Peak Dry Flow (mgd)	Monitor	Proposed Manhole ID
			Proposed P=Permanent T=Temp	
91	Miramar Road 1911 Act (18") [SDT51-91]	0.183	T	E08S 2
94	Abbot Street (18) [SDT52-94]	0.502	T	B18S 106
102	Carmel Country (18") [SDT53-102]	1.483	T	D01S 230

116	New El Camino Real (18") [SDT54-116]	0.411	T	C02S 480
118	South Pacific Hwy (36") [SDT55-118]	4.64	T	F22S 523
119	New Chollas Valley (27") [SDT56-119]	5.15	T	J21S 581
120	Black Mountain Ranch (18") [SDT57-120]	0.76	T	G02S 484
122	Logan Heights (18") [SDT58-122]	0.5	T	G23S 329
123	Citracado (24") [SDT59-123]	3.5	T	I15N 24
TBD	TBD	TBD	T	TBD
	<b>Total Temporary Monitors</b>		<b>10</b>	

ATTACHMENT 1

PRICING SCHEDULE

<b>Detailed Pricing Schedule</b>					
<b>Item No.</b>	<b>Description or Service</b>	<b>QTY</b>	<b>No. of Meters</b>	<b>Unit Price/Month</b>	<b>Total</b>
1	Monitor Servers, Software and Servicing	6	162	\$ 510.88	\$ 496,575.36
2	Event Notification System	6	N/A	\$ 10,191.85	\$ 61,151.10
3	ENS Monitoring	6	N/A	\$ 5,648.52	\$ 33,891.12
4	Additional Monitor Equip, services and install (SCADA Integration)	5	5	\$ 75,000.00	\$ 75,000.00
4	Additional Monitor Equip, services and install (ECHO Service)	6	56	\$ 169.00	\$ 56,784.00
4	Additional Monitor Equip, services and install (ECHO Installation)	6	10	350.00	\$ 21,000.00
				<b>6-Month Total</b>	<b>\$ 744,401.58</b>

Revised  
Exhibit B



**THE CITY OF SAN DIEGO**  
**GENERAL CONTRACT TERMS AND PROVISIONS**  
**APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS**

## ARTICLE I SCOPE AND TERM OF CONTRACT

**1.1 Scope of Contract.** The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

**1.2 Effective Date.** A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

**1.3 Contract Extension.** The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

## ARTICLE II CONTRACT ADMINISTRATOR

**2.1 Contract Administrator.** The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

**2.1.1 Contractor Performance Evaluations.** The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

**2.2 Notices.** Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent  
City of San Diego, Purchasing and Contracting Division  
1200 3rd Avenue, Suite 200  
San Diego, CA 92101-4195

### ARTICLE III COMPENSATION

**3.1 Manner of Payment.** Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

**3.2 Invoices.**

**3.2.1 Invoice Detail.** Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

**3.2.2 Service Contracts.** Contractor must submit invoices for services to City by the 10<sup>th</sup> of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

**3.2.3 Goods Contracts.** Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

**3.2.4 Parts Contracts.** Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

**3.2.5 Extraordinary Work.** City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

**3.2.6 Reporting Requirements.** Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

**3.2.6.1 Monthly Employment Utilization Reports.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.2.6.2 Monthly Invoicing and Payments.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.3 Annual Appropriation of Funds.** Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

**3.4 Price Adjustments.** Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

## **ARTICLE IV SUSPENSION AND TERMINATION**

**4.1 City's Right to Suspend for Convenience.** City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

**4.2 City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of

documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

**4.3 City's Right to Terminate for Default.** Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

**4.3.1** If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

**4.3.2** If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

**4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors.** If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

**4.5 Contractor's Right to Payment Following Contract Termination.**

**4.5.1 Termination for Convenience.** If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

**4.5.2 Termination for Default.** If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

**4.6 Remedies Cumulative.** City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

## **ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS**

**5.1 Inspection and Acceptance.** The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

**5.2 Responsibility for Lost or Damaged Shipments.** Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

**5.3 Responsibility for Damages.** Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

**5.4 Delivery.** Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

**5.5 Delay.** Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

**5.5.1** If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

**5.6 Restrictions and Regulations Requiring Contract Modification.** Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

**5.7 Warranties.** All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

**5.8 Industry Standards.** Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

**5.9 Records Retention and Examination.** Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

**5.9.1** Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

**5.10 Quality Assurance Meetings.** Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

**5.11 Duty to Cooperate with Auditor.** The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

**5.12 Safety Data Sheets.** If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

**5.13 Project Personnel.** Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

**5.13.1 Criminal Background Certification.** Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

**5.13.2 Photo Identification Badge.** Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

**5.14 Standards of Conduct.** Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

**5.14.1 Supervision.** Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

**5.14.2 City Premises.** Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

**5.14.3 Removal of Employees.** City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

**5.15 Licenses and Permits.** Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

**5.16 Contractor and Subcontractor Registration Requirements.** Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

## **ARTICLE VI INTELLECTUAL PROPERTY RIGHTS**

**6.1 Rights in Data.** If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

**6.2 Intellectual Property Rights Assignment.** For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

**6.3 Contractor Works.** Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

**6.4 Subcontracting.** In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a “works for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

**6.5 Intellectual Property Warranty and Indemnification.** Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor’s own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim

of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

**6.6 Software Licensing.** Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

**6.7 Publication.** Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

**6.8 Royalties, Licenses, and Patents.** Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

## **ARTICLE VII INDEMNIFICATION AND INSURANCE**

**7.1 Indemnification.** To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly, in whole or in part, any defective goods provided or Contractor's negligence in the performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the negligence or willful misconduct of the Indemnified Parties.

**7.2 Insurance.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or

in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

**7.2.1 Commercial General Liability.** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

**7.2.2 Commercial Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

**7.2.3 Workers' Compensation.** Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

**7.2.4 Professional Liability (Errors and Omissions).** For consultant contracts, insurance appropriate to Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**7.2.5 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

**7.2.5.1 Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

**7.2.5.2 Primary Coverage.** For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**7.2.5.3 Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

**7.2.5.4 Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**7.2.5.5 Claims Made Policies (applicable only to professional liability).** The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

**7.3 Self Insured Retentions.** Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

**7.4 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

**7.5 Verification of Coverage.** Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**7.6 Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**7.7 Additional Insurance.** Contractor may obtain additional insurance not required by this Contract.

**7.8 Excess Insurance.** All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

**7.9 Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

## **ARTICLE VIII BONDS**

**8.1 Payment and Performance Bond.** Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

**8.1.1 Bond Amount.** The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

**8.1.2 Bond Term.** The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

**8.1.3 Bond Surety.** The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

**8.1.4 Non-Renewal or Cancellation.** The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force

and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

**8.2 Alternate Security.** City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

## **ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS**

**9.1 Contractor Certification of Compliance.** By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

**9.1.1 Drug-Free Workplace Certification.** Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

**9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations:** Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

### **9.1.3 Non-Discrimination Requirements.**

**9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP).** Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

**9.1.3.2 Non-Discrimination Ordinance.** Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result

in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

**9.1.3.3 Compliance Investigations.** Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.4 Equal Benefits Ordinance Certification.** Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

**9.1.5 Contractor Standards.** Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.6 Noise Abatement.** Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

**9.1.7 Storm Water Pollution Prevention Program.** Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

**9.1.8 Service Worker Retention Ordinance.** If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

**9.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

**9.1.10 Business Tax Certificate.** Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

**9.1.11 Equal Pay Ordinance.** Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

**9.1.11.1 Contractor and Subcontract Requirement.** The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

## **ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW**

**10.1 Conflict of Interest Laws.** Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

**10.2 Contractor's Responsibility for Employees and Agents.** Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

**10.3 Contractor's Financial or Organizational Interests.** In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

**10.4 Certification of Non-Collusion.** Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or

solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

**10.5 Hiring City Employees.** This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

## **ARTICLE XI DISPUTE RESOLUTION**

**11.1 Mediation.** If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

**11.2 Selection of Mediator.** A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

**11.3 Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

**11.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

**11.5 Mediation Results.** Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

## **ARTICLE XII MANDATORY ASSISTANCE**

**12.1 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations,

attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

**12.2 Compensation for Mandatory Assistance.** City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

**12.3 Attorneys' Fees Related to Mandatory Assistance.** In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

### **ARTICLE XIII MISCELLANEOUS**

**13.1 Headings.** All headings are for convenience only and shall not affect the interpretation of this Contract.

**13.2 Non-Assignment.** Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

**13.3 Independent Contractors.** Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

**13.4 Subcontractors.** All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

**13.5 Covenants and Conditions.** All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

**13.6 Compliance with Controlling Law.** Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract

termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

**13.7 Governing Law.** The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

**13.8 Venue.** The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

**13.9 Successors in Interest.** This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

**13.10 No Waiver.** No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

**13.11 Severability.** The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

**13.12 Drafting Ambiguities.** The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

**13.13 Amendments.** Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

**13.14 Conflicts Between Terms.** If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

**13.15 Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

**13.16 Confidentiality of Services.** All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

**13.17 Insolvency.** If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

**13.18 No Third Party Beneficiaries.** Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

**13.19 Actions of City in its Governmental Capacity.** Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

**EXHIBIT C**  
**CITY REQUIRED FORMS**

- 1) Contractor Standards Pledge of Compliance
- 2) Equal Opportunity Contracting forms, including Contractors Certification of Pending Actions and Work Force Report

## EXHIBIT D

### WAGE REQUIREMENTS: SERVICE AND MAINTENANCE CONTRACTS EXECUTED ON OR AFTER JANUARY 1, 2015

By signing this Contract, Bidder certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

**A. PREVAILING WAGES.** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, Bidder and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code sections 22.4201 through 22.4245. Bidder must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

**1. Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, Bidder and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

**1.1.** Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Bidder and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

**1.2.** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

**2. Penalties for Violations.** Bidder and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

**3. Payroll Records.** Bidder and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Bidder shall require its subcontractors to also comply with section

1776. Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City. Bidder and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

**4. Apprentices.** Bidder and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Bidder shall be held responsible for their compliance as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

**5. Working Hours.** Bidder and its subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

**6. Required Provisions for Subcontracts.** Bidder shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

**7. Labor Code Section 1861 Certification.** Bidder in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Bidder certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

**8. Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

**9. Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A Bidder or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1.(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

**9.1.** A Bidder's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee

specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

**9.2.** A Contract entered into with any Bidder or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a Contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, Bidder, or any subcontractor to comply with the requirements of section 1725.5 of this section.

**9.3.** By submitting a bid or proposal to the City, Bidder is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Bidder shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

**10. Stop Order.** For Bidder or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered Bidder or unregistered subcontractor(s) on ALL public works until the unregistered Bidder or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

**11. List of all Subcontractors.** The City may ask Bidder for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this contract at any time during performance of this contract, and Bidder shall provide the list within ten (10) working days of the City's request. Additionally, Bidder shall provide the City with a complete list of all subcontractors utilized on this contract (regardless of tier), within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Bidder until at least 30 days after this information is provided to the City.

**12. Exemptions for Small Projects.** There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Bidder shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

**12.1.** Registration. The Bidder will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

**12.2.** Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Bidder will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

**12.3.** List of all Subcontractors. The Bidder shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).