

SERVICES AGREEMENT

BETWEEN THE

CITY OF SAN DIEGO



AND

SHIMADZU SCIENTIFIC INSTRUMENTS, INC.

**TO PROVIDE AN LCMS-8060 TRIPLE QUADRUPOLE
LIQUID CHROMATOGRAPH MASS SPECTROMETER (LC-
MS/MS) AND INSTALLATION, TRAINING, TECHNICAL,
AND PREVENTATIVE MAINTENANCE SERVICES**

SERVICES AGREEMENT

This Services Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and Shimadzu Scientific Instruments, Inc. (Contractor).

RECITALS

City wishes to retain Contractor to provide LCMS-8060 Triple Quadrupole Liquid Chromatograph Mass Spectrometer (LC-MS/MS) and Installation, Training, Technical, and Preventative Maintenance Services, as further described in the Scope of Work (Goods and Services), attached hereto as Exhibit A.

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

City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Goods and 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 Goods and Services to City as described in Exhibit A, Scope of Work, 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:

Dean Heil, Associate Chemist
Environmental Monitoring & Technical Services Division
5530 Kiowa Drive
San Diego, CA 91942
DHeil@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 five (5) years beginning effective on the date it is executed by the last Party to sign the Agreement. Unless otherwise terminated, this Agreement shall be effective when executed until completion of the Scope of Services. 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 \$630,000 or the amount referenced in the Purchase Order.

**ARTICLE IV
WAGE REQUIREMENTS**

4.1 Reserved.

ARTICLE IV
CONTRACT DOCUMENTS

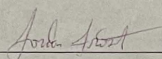
4.1 **Contract Documents.** This Agreement and its exhibits constitute the Contract Documents. The Contract Documents completely describes the goods and services to be provided.


4.2 **Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a 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.

SHIMADZU SCIENTIFIC
INSTRUMENTS, INC.

CITY OF SAN DIEGO
A Municipal Corporation

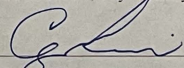
BY: 
Jordan Frost
Regional Manager
Shimadzu Scientific Instruments

BY: 
Print Name: Claudia C. Garcia
Director
Purchasing & Contracting Department

3/24/2022
DATE SIGNED

March 25, 2022
DATE SIGNED

Approved as to form this 9 day of
May, 2022
MARA ELLIOTT, City Attorney

BY: 
Deputy City Attorney
CAROLYN GUNNO

**EXHIBIT A
SCOPE OF WORK**

**SPECIFICATIONS FOR LC/MS/MS INSTRUMENT AND ASSOCIATED
SERVICE PLANS FOR BOTH NEW AND EXISTING LC/MS/MS INSTRUMENTS**

A. OVERVIEW

Daily operation of the Environmental Monitoring and Technical Services Laboratory (EMTS) of the City of San Diego (City), Public Utilities Department requires to have two (2) liquid chromatograph/ dual mass spectrometers (LC/MS/MS) instruments of the same brand with associated gas generator, data station, and peripherals of the same brand. The LC/MS/MS instruments will be used mainly to support the City's Pure Water Project. This includes meeting regulatory mandated monitoring requirements for Contaminants of Emerging Concern (CECs) as described in the City of San Diego Pure Water Project National Pollutant Discharge Elimination (NPDES) Permit issued by the State of California Water Resources Control Board. The LC/MS/MS technology is the only technology approved by the State Water Board for the measurement of multiple organic contaminants by accepted laboratory analytical methods which are required for monitoring under the Pure Water Project Phase I NPDES permit. These contaminants include PFOA, PFOS, pharmaceuticals, hormones, flame retardants, and X-Ray contrast agents.

B. SYSTEM REQUIREMENTS

Equipment shall meet the minimum specifications stated below.

All major components of the LCMS system, excluding gas supply/generator equipment and data station hardware, shall be manufactured and serviced by the same company. All components of the LCMS system shall be new. Demonstration models are not acceptable.

Equipment shall be capable of satisfying the minimum LC/MS/MS system requirements outlined in each of the following Environmental Protection Agencies (EPA) methods: EPA 533, EPA 537.1, EPA 539, EPA 542, EPA 544, and EPA 545. The instrument system must also be capable of performing Method SM 6810 from Standard Methods for Water and Wastewater Analysis.

C. COMPUTER DATA STATION AND OPERATING SYSTEM REQUIREMENTS

Computer data station and operating system shall be configured to meet or exceed instrument manufacturer specifications, subject to the following minimum requirements:

1. Operating system: Windows 10 Professional
2. Architecture: 64 bit
3. Processor: 4 cores; 10MB; 3.6 GHz or equivalent
4. RAM: 16 GB

5. Storage: 2 TB (total) HDD; 6 Gb/s; 7200
6. Expandability: 2 (PCIe 3.0 16x); 1 (PCIe 3.0 8x)
7. Removable media: 1(16X DVD +/-RW)
8. I/O ports: 4 (external USB 3.0); 6 (external USB 2.0)
9. Monitor: 24" panel; 1920x1080; 16:9 w/speaker bar or stereo speakers
10. Keyboard: Qwerty/110 ANSI; USB
11. Mouse: Optical; USB

D. SOFTWARE REQUIREMENTS

Software shall meet all of the following requirements:

1. Software shall be customized for vendor specified ultra-high-performance liquid chromatograph (UHPLC) and LCMS systems. Software may be preloaded but physical copies with user's license agreements, software, and hardware guidance manuals shall be included.
2. Software shall be manufacturer's latest version with release date no earlier than 2020.
3. Software shall be designed to preferentially operate on 64bit architecture and Windows 10 operating system.
4. Internet connectivity shall not be required for essential acquisition software and operating system functioning.
5. Software shall fully integrate all instrument functions (including UHPLC control, mass spectrometer (MS) control, manual and automatic tuning, manual and automatic compound optimization, ion preparation, ion modification, sequential acquisition, batch reprocessing, qualitative and quantitative analysis, statistical analysis and reporting functions – minor exceptions are degasser, rotary pump and gas generator) into a single unified operating platform. Multiple platform software packages or third party "add-on" programs used to satisfy basic functionality are not permitted.
6. Software shall have the capability to store and search standard library or user generated multiple reaction monitoring (MRM) transitions or spectra according to name, Chemical Abstracts Service (CAS) number, molecular weight, empirical formula, MRM transitions, or spectra.
7. Software shall allow manual adjustments to source and mass spectrometer method parameters for instrument tuning and compound optimization.
8. Software shall be capable of performing automatic MS tuning via automatic acquisition of one or more tuning compounds and automatic sequential modification of source and mass spectrometer method parameters.
9. Software shall be capable of performing automatic sequential compound optimization via automatic sequential compound acquisition and automatic sequential modification of source and mass spectrometer method parameters.
10. Software shall be capable of measuring user specified MRM transitions that are programmed as a function of analytical run time (also known as scheduled MRM acquisition and analysis).

11. Software shall be capable of performing both qualitative and quantitative analysis on a sample with data acquired from a single run (also known as triggered scanning acquisition and analysis).

E. UHPLC REQUIREMENTS

UHPLC shall meet all of the following requirements:

1. The UHPLC shall be a bench top, modular design (degasser and column holder integration with pump and auto-sampler is permitted) with stackable components to include the following:
 - a. Standard flow, quaternary gradient pump with low pressure mixing for four (4) solvents
 - b. Vacuum degasser for four (4) or more solvent lines
 - c. Auto-sampler
 - d. Temperature controlled column holder
 - e. Solvent bottles with rack
 - f. Programmable
2. The UHPLC shall incorporate compressibility compensation and automatic seal washing.
3. All components of the UHPLC system shall belong to the same model series whose year of introduction shall be no earlier than 2018.
4. The UHPLC pump operational pressure range shall extend to 18,000 psi at 2.0 mL/min or better. All modules and peripherals shall be suitably designed for maximum pump pressure.
5. The UHPLC pump minimum settable flow range shall be < 0.001 mL/min and the maximum settable flow range shall be > 5 mL/min. The settable increments of flow must be < 0.001 mL/min.
6. The UHPLC pump shall be capable of achieving a flow precision of < 0.07 % RSD or 0.02 minutes SD, whichever is greater.
7. The UHPLC pump shall be capable of low-pressure quaternary mixing in linear gradient ratios ranging from 0 to 100%.
8. The UHPLC pump shall be capable of achieving a composition accuracy of low-pressure quaternary mixing of $+ 0.5$ % or less.
9. The auto-sampler sample injection volume range shall be 0.2 μ L, or greater, in 0.2 μ L increments or smaller.
10. The auto-sampler shall be capable of achieving an injection volume precision of 0.25 % RSD or less.
11. The auto-sampler capacity shall be 100 vials (1.5 to 2.0 mL), or greater, with sample cooling capability.
12. The column holder shall feature block or forced air heating with one or more isothermal or programmable temperature zones ranging from $< 5^{\circ}\text{C}$, above room temperature, to $> 110^{\circ}\text{C}$.

13. The column holder must be able to accommodate at least two columns: up to 2.1 mm ID x 150 mm length.
14. The UHPLC system shall include a programmable flow diversion valve to permit automatic diversion of flow streams between the source and waste, according to adjustable acquisition method set points.
15. A physical set of instruction manuals, covering every UHPLC component, shall be provided.

F. MASS SPECTROMETER (MS) SYSTEM REQUIREMENTS

MS system requirements shall include the following:

1. The MS shall be a liquid chromatography, triple quadrupole, benchtop design that can be configured to accommodate optional electrospray ionization (ESI), atmospheric pressure chemical ionization (APCI), and dual (ESI + APCI) ionization probes and/or source module(s).
2. All components of the MS system shall belong to the same model series whose year of introduction shall be no earlier than 2015.
3. The MS shall be designed to operate in ESI, APCI, and dual (ESI + APCI) ionization modes using either positive or negative polarities.
4. The MS sources or probes shall be of external, modular (interchangeable) design to allow simple physical reconfiguration between ESI, APCI, and dual (ESI + APCI) ionization modes.
5. ESI probe and/or source module(s) shall be provided and shall be operable in dedicated ion-source configurations as necessary for maximum sensitivity.
6. The source(s) shall be an "orthogonal inlet / vertical probe" design that employs heated probe(s) and heated desolvation technology.
7. Polarity switching shall be completed in 10 msec or less under all scan modes, speeds, and ranges.
8. Both the ESI and APCI probes shall be capable of operating with flows between 10 uL/min to 2000 uL/min without splitting.
9. The MS shall be capable of operating in the following modes:
 - a. Full scan MS (Q1 or Q3)
 - b. SIM (Q1 or Q3)
 - c. MRM
 - d. Product ion scanning
 - e. Precursor ion scanning
 - f. Neutral loss scanning
10. The MS range shall be 10 to 2000 m/z or larger when $z = \pm 1$.
11. The MS shall be capable of scanning 15,000 amu/sec with no loss of sensitivity and no reduction of mass range over all scan modes.
12. The MS resolution shall be adjustable to 0.5 amu full width at half maximum (FWHM) or less across the entire mass range.
13. The MS shall be capable of measuring 500 MRM transitions per second.
14. The MS shall be capable of acquiring 10,000 separate MRM transitions per method.

15. The MS shall be capable of measuring user specified MRM transitions that are programmed as a function of analytical run time (also known as scheduled MRM acquisition).
16. The MS shall be capable of automatically initiating qualitative data scans upon measurement of predefined threshold criteria when acquiring in MRM mode (also known as data dependent or triggered acquisition).
17. A physical set of instruction manuals covering every MS component shall be provided.
18. The roughing pump shall be included in the instrument cost and must be oil-free.

G. GAS GENERATOR REQUIREMENTS

Gas generator shall meet the following requirements:

1. The gas generator shall be a single unit with an integrated compressor. Instruction manual shall be provided.
2. The gas generator shall satisfy the instrument's pressure, flow, and purity requirements for all ion source gases.

H. DELIVERY

Delivery shall be FOB destination. Deliveries shall be made during receiving hours, 8:00 am to 3:00 pm, Monday through Friday, not including City holidays, to the specific location where instrument will be installed. Contractor shall be responsible for establishing delivery schedule with the Technical Representative.

All deliveries shall be accompanied by an invoice or delivery receipt which includes pricing and references applicable purchase order number. A copy of an invoice or a delivery receipt shall be signed by City personnel accepting delivery.

Delivery shall be made to the following location:

Alvarado Joint Lab Facility
5530 Kiowa Drive
La Mesa, CA 91942

NOTE: Tax rate for this location is subject to the effective San Diego tax rate, not La Mesa rate.

I. EQUIPMENT INSTALLATION, VALIDATION, AND TRAINING

Contractor shall assume sole responsibility for unpacking and verifying inventory. Installation, validation of new equipment, and training shall be included in the price. Contractor- shall include minimum site requirements. Prior to installation, the Technical Representative and Contractor shall schedule a site inspection to ensure site requirements have been met for equipment installation.

Validation of the instrument shall be comprised of:

1. A demonstration of the acquisition software ability to control instrument modules and set points including flow rates, injection modes, temperature zones, pressure gradients, voltages, and scan functionality.
2. A demonstration that the instrument can be tuned and mass-calibrated, according to manufacturer's specifications.
3. A demonstration that both ESI and APCI probes can be optimized in both positive and negative modes according to manufacturer's specifications.
4. A demonstration that the instrument can satisfy the manufacturer performance specification for 24-hour mass stability.

Columns, solvents, and other consumables, necessary for validation, except collision gas, shall be provided by Contractor.

Upon installation and validation, Contractor shall provide no less than 40 hours on-site instrument familiarization and training to four (4) users.

Familiarization and training topics shall include:

1. Acquisition software
2. Instrument configuration
3. Tuning and optimization
4. Method development
5. Calibration
6. Acquisition (all modes described in section F.9 above)
7. Data processing
8. Reporting
9. System maintenance

Within the first week after validation, Contractor shall provide 24 hours instrument familiarization and training over a period of 3 to 4 days.

Within the first month after validation, Contractor shall provide the remaining 16 hours instrument familiarization and training over a period of 2 to 3 days.

Pamphlets, containing organized instruction materials covering all familiarization and training topics, shall be provided to each trainee.

Installation and training shall occur after delivery of the equipment. Contractor and the Technical Representative shall schedule installation and training, as appropriate. Due to the time lapse between delivery of the equipment, installation, and training, separate invoicing may be acceptable based on mutual agreement between the Technical Representative and Contractor.

J. SITE RESTRICTIONS

When installed adjacently, the mass spectrometer, diversion valve, and liquid chromatograph stack must be designed to operate within the confines of a benchtop measuring 36" x 96".

The LCMS instrument shall be capable of operating with only one rotary (backing) pump.

The rotary pump shall be capable of being placed on a floor, directly underneath a benchtop, holding the mass spectrometer.

Contractor shall supply buck/boost transformers as necessary for all devices requiring modification of 208 VAC, 50/60 Hz devoted circuits.

K. MANUFACTURER'S WARRANTY

Contractor shall provide a written manufacturer's warranty against defects, materials, and workmanship for a minimum one (1) year from the date of acceptance by the City after installation and validation of the instrument. Contractor shall submit a copy of the manufacturer's warranty. Where a manufacturer's warranty exceeds a period of one (1) year, the manufacturer's warranty shall also be provided to the City.

In the event of equipment or parts failure during the warranty period, the City will provide notice to the contractor who shall repair or replace the equipment or parts at no cost to the City.

If any conflicts arise between the manufacturer's warranty and the contract, the contract shall prevail.

L. EXTENDED WARRANTY AND PREVENTATIVE MAINTENANCE SERVICE PLAN FOR THE NEW LC/MS/MS INSTRUMENT

Additional extended maintenance warranty plus annual preventative maintenance visits to cover a full five-year period beginning at the time of instrument installation shall be provided by the Contractor. Third-party vendors will not be accepted.

The extended warranty and preventative maintenance plan shall include the following:

1. Minimum of one (1) annual, scheduled preventative maintenance visit per year.
 - a. Replacement of minor parts that are subject to normal wear and tear.
 - b. Cleaning, adjustments, lubrication, and validation.
 - c. Software revisions.
 - d. All labor, insurance, and travel expenses.
2. Extended warranty
 - a. Replacement or repair of all defective, damaged, underperforming, or

- inoperative parts not due to operator fault or neglect.
 - b. All parts, labor, insurance, travel, and miscellaneous expenses necessary to repair and restore equipment to performance specifications, subject to paragraph 2a.
 - c. On-site repair (when practical) during normal business hours, Monday through Friday, 8:30 a.m. to 5:00 p.m., excluding City holidays.
 - d. Phone support.
 - e. Shipment of replacement parts/instructions for user installation and repair where practical.
 - f. 48-hour response time (2 business days) for phone support or repair parts order placement and five (5) business days response time for on-site support.
3. Instrument loan program
- a. At the City request, Contractor shall provide loaner equipment of substantially equivalent design and performance in the event that any replacement or repair order of a defective, damaged, underperforming, or inoperative part not due to operator fault or neglect extends or is expected to extend beyond 45 days.
 - b. Delivery, installation, and return of loaner equipment shall be provided by Contractor.
 - c. City agrees to limit use of loaner equipment to applications for which it has been designed.
 - d. Except in cases arising from operator fault or neglect, City assumes no responsibility for loss or damage to loaner equipment.

Except for the data station and gas generation equipment, all on-site repairs and annual preventive maintenance shall be performed by certified technicians employed by the Contractor. Third party service providers are not permitted.

Contractor shall guarantee that the entire LC/MS/MS system is serviceable and replacement parts are available for a period of ten (10) years from the date of purchase. Contractor shall provide free technical support for the life of the instrument.

M. EXTENDED WARRANTY AND PREVENTATIVE MAINTENANCE SERVICE PLAN FOR THE EXISTING LC/MS/MS INSTRUMENT

A five-year extended maintenance warranty plus annual preventative maintenance visits for the existing LC/MS/MS instrument purchased by EMTS in 2016 (LCMS-8060 main unit SN 011105450007) shall be included which is identical to the requirements outlined in part L, with the exception that the PEAK gas generation equipment provided with the existing LC/MS/MS system is excluded. The extended warranty maintenance and service shall be provided by the Contractor. Third-party vendors will not be accepted.

N. PRICING SCHEDULE

The pricing schedules below summarize the costs for the one-time purchase of the second

Shimadzu instrument and five (5) years preventive maintenance services for both Shimadzu instruments.

Item No.	Description	Price
1	One-time purchase of Liquid Chromatography/ dual Mass Spectrometry (LC/MS/MS) LCMS-8060 instrument	\$359,784.28
2	Five (5) years preventive maintenance	\$101,363.25
3	Five (5) years preventive maintenance of LCMS-8060 instrument purchased in 2016	\$118,689.60
Total		\$579,837.13

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 10th 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 (5th) 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 (5th) 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, incidental and consequential 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 or indirectly, in whole or in part, any goods provided or 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 sole 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.

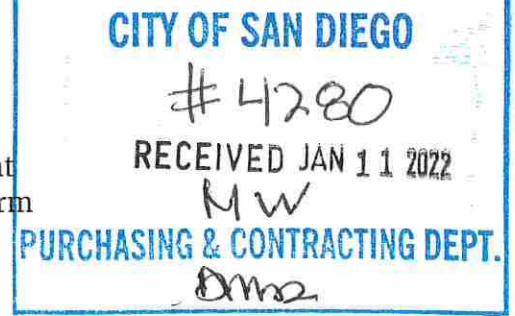
13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its 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.

Purchasing and Contracting Department
Sole Source Request and Certification Form



To: Director of Purchasing and Contracting
Cc: Deputy Chief Operating Officer, Infrastructure / Public Works
From: Peter Vroom, Deputy Director, EMTS

Date: November 18, 2021

In alignment with the guidance provided in the San Diego Municipal Code section 22.3016, the Purchasing Agent (Director of Purchasing and Contracting) must certify that the award of a sole source contract is necessary by memorializing in writing why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible.

For consideration, this form must be completed and all required accompanying information must be submitted together, including any related contracts. Failure to do so will result in a delay of approval of the request.

Describe commodity or service(s) to be purchased. Include vendor contact information.

The Environmental Monitoring and Technical Services Laboratory (EMTS) of the Public Utilities Department (PUD) requests approval of this certification of sole source procurement with Shimadzu Scientific Instruments, Inc. (Shimadzu) to purchase a second Liquid Chromatography/dual Mass Spectrometry (LC/MS/MS) LCMS-8060 Instrument and to establish five (5) years agreement to provide full maintenance services. The agreement will also include five (5) years full maintenance services for the first Shimadzu LCMS-8060 instrument purchased in 2016 through a formal bid process, ITB 10079335-17-T.

Both LCMS-8060 instruments are needed to support Pure Water Project regulatory requirements. The LC/MS/MS technology is the only technology approved by the State Water Board for the measurement of multiple organic contaminants by accepted laboratory analytical methods which are required for monitoring under the Pure Water Project Phase I NPDES permit. These contaminants include PFOA, PFOS, pharmaceuticals, hormones, flame retardants, and X-Ray contrast agents. The new instrument will supplement the existing LCMS-8060 instrument which included the associated data station and peripherals needed to perform the required analytical methods. To meet all Pure Water Project Monitoring requirements, the City will be required to run a total of eight (8) different analytical methods which require two (2) dedicated full-time chemists operating two (2) LCMS-8060 instruments.

EMTS is requesting to purchase another Shimadzu instrument, as the second instrument, because the LC/MS/MS instrumentation and software are highly complex and significant differences exist across different brands. Consequently, analyst training on LC/MS/MS equipment and software requires a significant investment and such training does not translate directly from one brand to another brand. Attachment 1, included with this sole source, provides further information in regards to the advantages in laboratory operational efficiency gained by purchasing a Shimadzu instrument, as the second LC/MS/MS LCMS-8060 instrument, as opposed to purchasing another brand.

EMTS is requesting approval of this procurement with Shimadzu for a period of five (5) years for an amount not to exceed \$630,000.00.
Shimadzu LCMS-8060 instrument-\$359,784.28
Five (5) year maintenance-\$ 101,363.25
Five (5) years maintenance of the Shimadzu LCMS-8060 instrument purchased in 2016-\$118,689.60
Total amount-\$579,837.13
The total amount after taxes (7.75%)-\$624,774.51

Vendor Contact Information:
Michelle Zipse
Shimadzu Scientific Instruments, Inc.
1930 Palomar Way, Suite 107
Carlsbad, CA 92008
(866) 862-1677 Ext. 2395
mazipse@shimadzu.com

Justification

1. This product or service is available from only one supplier and meets at least one of the following criteria (please check all that are applicable):

- One-of-a-kind/Compatibility*
- a. Required by Warranty: the product matches existing equipment, infrastructure and is required by warranty. (A letter from the provider which supports this claim must be provided.)
- b. Goods and Services:
- i. the good has no competitive product or alternative on the market.
- ii. the service requires a special skill, ability, or expertise linked to the current project that cannot be provided by another supplier.

(Documentation in support of either of the above claims must be provided by the requesting department.)

City Standards The product or service complies with established, existing City standards.

Replacement The product or service is the only compatible replacement component that supports a larger system. Or, the services are the only ones that can replace the existing service requirements.

2. Do any of the following situations exist?

Limited Competition Department made an attempt to find a second or multiple sources to no avail.

Emergency There is an urgent need for the item or service and time does not permit the City to solicit for competitive bids, as in the cases of emergencies as defined under SDMC section 22.3208,. (Delays in solicitation do not satisfy this criteria)

Cost/Market Analysis

Purchasing and Contracting will perform due diligence on each request. If Purchasing and Contracting can find a suitable, cost effective alternative, this request will be denied and that alternative will be pursued after your department has been contacted to discuss the revised determination.

This form does not take the place of an agreement and all sole source requests for a period of one year or longer will require the **submission of an agreement**. The requesting department must submit a purchase requisition and a copy of this certification to Purchasing and Contracting for a Purchase Order to be issued.

PCO Due Diligence (PCO to initial all that apply)

- ____ Proof of warranty or maintenance requirement for standardized and replacement items confirmed.
- ____ Vendor/Supplier confirmed submission of justification letter.
- ____ Market test confirmed that there is no advantage to the City in competing this contracting opportunity to multiple vendors.
- ____ Emergency verified with the department.
- MLW Pricing agreement has been reviewed.

MLW Purchasing and Contracting has reviewed this request and affirms that this request for a sole source justification is appropriate.

This sole source is approved for:

- One (1) year from the signature date below.
- For the entire length of the contract, but not more than five (5) years.


The length of the contract must be consistent with the sole source approval. A sole source request must be submitted and approved by the Purchasing and Contracting Director prior to the award of each new contract and prior to each extension of an existing contract that was not contemplated in the initial contract term.

____ After reviewing the provided information and due diligence, I cannot recommend the approval of this request.

Purchasing and Contracting Director Review

I certify that strict compliance with a competitive process would be unavailing or would not produce an advantage, and that soliciting bids or proposals would be therefore undesirable, impracticable or impossible. My approval is contingent on the information provided in this form.

- In accordance with SDMC §22.3016, this request is approved.
- Based on the information provided and due diligence recommendation of staff, this request is denied.



Claudia C. Abarca, Director, Purchasing and Contracting

1/13/2022

Date