

SERVICES AGREEMENT

BETWEEN THE

CITY OF SAN DIEGO



AND

ITRON, INC.

**TO PROVIDE MAINTENANCE & SUPPORT SERVICES FOR
THE ADVANCED METERING INFRASTRUCTURE FIXED
NETWORK CHOICE CONNECT SYSTEM AND MULTI-
VENDOR READING SYSTEM (MV-RS) HARDWARE AND
SOFTWARE**

SERVICES AGREEMENT

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

RECITALS

City wishes to retain Contractor to provide maintenance & support services for the Advanced Metering Infrastructure (AMI) fixed network choice connect system and Multi-Vendor Reading System (MV-RS) hardware and software, as further described in the Scope of Services (Services), attached hereto as Exhibit A.

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

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

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

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

ARTICLE I CONTRACTOR SERVICES

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

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

David Bryant, Program Manager
Water Construction & Maintenance
Public Utilities Department
9192 Topaz Way
San Diego, CA 92123
dbryant@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.

Agreement
Effective: October 13, 2014
OCA Document No. 788709_3

ARTICLE II DURATION OF AGREEMENT

2.1 Term. This Agreement shall be for a period of three (3) years beginning September 1, 2019 through August 31, 2022. City may, in its sole discretion, extend this Agreement for two (2) additional one-year period(s). Unless otherwise terminated, this Agreement shall be effective until completion of the Scope of Services or **August 31, 2022**, whichever is earliest. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

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

ARTICLE III COMPENSATION

3.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with this Agreement in an amount not to exceed \$2,600,000.00 or the amount referenced in the Purchase Order. **Contractor shall invoice the City for services provided according to the monthly payment schedule, attached as Attachment 1.**

ARTICLE IV WAGE REQUIREMENTS

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

**ARTICLE V
CONTRACT DOCUMENTS**

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

5.2 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.

ITRON, INC.



BY: R. H. A. Fareow

July 10th 2020
DATE SIGNED

CITY OF SAN DIEGO
A Municipal Corporation

BY: 
Print Name

CHRISTIANA GAUGER
Interim Director Purchasing & Contracting
Department

7/15/2020
DATE SIGNED

Approved as to form this 24th day of
July, 2020.
MARA ELLIOTT, City Attorney


BY: 
Deputy City Attorney

EXHIBIT A SCOPE OF WORK

A. OVERVIEW

The City of San Diego (City), Public Utilities Department entered into an agreement with Itron, Inc. for the initial installation of its Advanced Metering Infrastructure (AMI) Fixed Network Choice Connect system. The City also uses the Itron Multi-Vendor Reading System (MV-RS) for collection and processing of meter read consumption data. These hardware and software items, which are proprietary to Itron, Inc., are needed for ongoing run the business needs to ensure that customer water consumption data is captured and billed properly.

B. SPECIFICATIONS

1. MAINTENANCE AND SUPPORT FOR CHOICE CONNECT FIXED NETWORK SYSTEM (COLLECTORS/CCU 100 AND REPEATER(S)/REPEATER 100)

a) Annual Preventive Maintenance (PM)

- Incoming inspections and performance tests
- Inspection / replacement of gaskets and seals, battery as needed
- Installation of Engineering Change Orders, if any (ECO's)
- Communication, receiver / transceiver checked as equipped
- Final operational and unit performance tests
- Return freight and insurance (for non-damaged items only)
- Priority 5-day turnaround on all Preventative Maintenance repairs

b) Corrective Maintenance Repairs

- "As Found" inspections, performance tests
- Equipment troubleshooting and analysis
- Corrective / repairs maintenance services (labor and materials)
- Repair of minor damage
- Engineering Change Orders applicable to hardware models owned by Customer.
- Replacement of failed battery
- Software re-load and final tests
- Return freight and insurance (for non-damaged items only)
- All non-damage related services included at no additional charge
- Priority 5-day turnaround on all Maintenance repairs

c) Consumable Supplies

- If needed, batteries replacements during repair events.
- External Antennas, as equipped (upon failure of production antenna)
- Replacement of external gaskets, covers, seals
- Consumable Freight expenses

d) Software Maintenance

- Critical releases for temporary correction of software problems that interfere with data collection and/or customer billing, pending permanent corrections in scheduled maintenance release(s)
- Scheduled System and Service Pack releases including correction of reported problems
- Maintenance releases may also include updated software features and system improvements
- Modification Request process
- Software Maintenance Services are available under an Itron Service Agreement
- Tier One support for third party software products released with the System
- Security patches installed within 30 days of patch release
- Critical patches installed within 24 hours of patch release

e) Customer Support Services

- 24hr / 7-day access via toll free Global Support Service number
- Customer and Technical support staff available 5:00 AM to 5:00 PM (Pacific Time), Monday through Friday.
- Non-urgent support (3 work day response, excluding weekends and holidays)
- Services include problem reporting, system operator assistance, system troubleshooting, problem tracking, return material administration, Installation support, sales order assistance, etc.
- Technical support for in-depth analysis and troubleshooting of system software problems

2. MAINTENANCE FOR MOBILE HANDHELD DEVICES (FC300), DOCKING STATIONS, AND MV-RS SOFTWARE

a) Annual Preventive Maintenance

- Incoming inspections and performance tests
- Inspection/replacement of gaskets and seals, keyboard, hand strap, connectors, primary and back-up battery if required
- Review / Installation of Engineering Change Orders (ECO's)
- Antenna and radio transceiver checks on Portable Network (PN) equipped units
- Final performance tests
- Return freight and insurance (for non-damaged items only)
- Repair of minor damage
- Priority turnaround on all Preventative Maintenance repairs

b) Unlimited Corrective Maintenance

- "As Found" inspections, performance tests, and data recovery (as necessary)
- Equipment troubleshooting and repair (labor and materials, exclusive of damaged units)
- Corrective repair maintenance services
- Software re-load and final tests (if applicable)

- Return freight and insurance (for non-damaged service events only)
- All non-damage related services included at no additional charge
- Priority repair turnaround on all Maintenance repairs

c) Consumable Supplies

- Primary batteries
- Antennas for PN (radio) equipped units
- Replacement hand straps, Port Covers
- Consumable Freight expenses

d) Software Maintenance

- Critical releases for temporary correction of software problems that interfere with data collection and/or customer billing, pending permanent corrections in scheduled maintenance release(s)
- Scheduled System and Service Pack releases, including correction of reported problems
- Maintenance releases may also include software feature improvements, current function and system improvements
- Application Software Modification Request process
- Software Maintenance Services are available under an Itron Service Agreement

e) Customer Support (for Itron Equipment / Itron Software)

- 24hr / 7-day access via toll free phone number.
- Customer and technical support staff available 5:00 AM to 5:00 PM (Pacific Time), Monday through Friday.
- After-hours access to Customer Support personnel for emergency issues
- Non-urgent support (24 hr., excluding weekends and holidays)
- Services include problem reporting, system operator assistance, system troubleshooting, problem tracking, return material administration, Installation support, sales order assistance, etc.
- Emergency requests for loaner equipment (maintenance unit only)
- “Off-line” technical support for analysis and troubleshooting of system software emergency problems

3. MAINTENANCE FOR MOBILE COLLECTOR UNIT AND SOFTWARE

a) Annual Preventive Maintenance (PM)

- Incoming inspections and performance tests
- Inspection/replacement consumable parts (batteries, straps, cables, antenna) for both radio and laptop.
- Installation of Engineering Change Orders (ECO’s)
- Load Software and Firmware versions as appropriate for repair/upgrade.
- Radio transceiver test validation
- Final performance tests
- Return freight and insurance

- Priority turnaround on all maintenance repairs

b) Corrective Maintenance Repairs

- “As Found” inspections, performance tests, and data recovery
- Equipment troubleshooting and repair
- Preventive maintenance services
- Current software re-load and final tests (based on licensed version)
- Return freight and insurance
- Docking Stations are repaired or replaced with new/refurbished working units
- Priority turnaround on all maintenance repairs

c) Consumable Supplies

- Replacement primary and back-up batteries
- Replacement straps and case parts
- Freight expenses

d) Customer Support (Equipment)

- 24hr / 7-day access via toll free Service number
- Customer and technical support staff available 5:00 AM to 5:00 PM (Pacific Time), Monday through Friday. After-hours access to Customer Support personnel
- Non-urgent support (24 hr., excluding weekends and holidays)
- Services include problem reporting, system operator assistance, system troubleshooting, problem tracking, return material administration, sales order assistance, etc.
- Emergency loaner equipment on an individual unit basis

e) Customer Support (Software)

- Support services as outlined under “Customer Support (Equipment)”
- “Off-line” technical support for in-depth analysis and troubleshooting of system software problems

4. MANAGED SERVICES

IN-FIELD NETWORK MAINTENANCE

Resolution Performance Metric

Activity	Target Production Service Level
Place field work order for non-communicating Network Device	Forty-Eight (48) hours
Dispatch Field Crew to non-communicating Network Device and restore communications	Seventy-two (72) hours

Agreement

Effective: October 13, 2014

OCA Document No. 788709_3

Roles & Responsibilities for In-Field Network Device Management

- Perform Network Device Repair, Replacement, or relocation as necessary.
- Manage the City owned stock of Network Device issued to vendor for field replacement purposes. Stock will be maintained at a City facility and issued to vendor as needed for replacement purposes through a process to be determined by the City.
- Close work orders and report Network Device status
- Perform Return Merchandise Authorization (RMA), Processing, Tracking, and Performance Reporting for Network Device.
- Manage Network Device work orders for investigation through completion
- Perform field maintenance on Network Devices including, Network Device battery changes and 4G upgrades. All 4G upgrades to be completed prior to July 2021.
- Provide Monthly list of all City AMI inventory in vendor possession
- Work with City to reconcile inventory lists.
- Notify City of any location changes made to Network devices.
- Payment bond shall be posted equal to the total cost for managed services to fixed networks.

5. SOFTWARE-AS-A-SERVICE

a) CHOICE CONNECT NETWORK AND ANALYTIC – SOFTWARE-AS-A-SERVICE

- Provide Choice Connect Network and Analytic Software-as-a-Service.
- Provide Production and Test Environments
- System to provide System Reports as follows:

Analytic Dashboard

Customer Service Rep (CSR) Views/Reporting – The primary dashboard used by Customer Service representatives for day-to-day interaction with customers designed to allow information to be viewed in multiple ways.

- Customer search parameters, account number, name, address, Endpoint, meter number, etc.
- Advanced search tab
- Show tools tab- moves to a different dashboard with current customer
- Usage and flow statistics tab- weekday vs. weekend, max/average/min flows
- Event history tab quick view of historical events for this account, tampers, alarms, etc.
- Meter info tab- meter size, type, etc.
- Usage comparison- usage vs. comparable meters as a percent, usage vs. same period last year
- Register odometer view with "Get Reading" button for updating register read displayed

- Map window using Google Maps
- Graphic display section:
 - Date range selection tool
 - Granularity selection, hourly, daily, monthly etc.
 - Display selection radio buttons- line, bar, temperature, maximum flow, minimum flow (leak), average flow.

Customer Web Presentment View – An extension of the CSR screen simplified for customer web presentment. This is the same basic view with fewer options than the CSR dashboard.

- Customer information section, account number, name, address, etc.
- Usage and flow statistics tab- weekday vs. weekend, maximum / average/ minimum flows
- Usage comparison- usage vs. comparable meters as a percentage, usage vs. same period last year
- Register odometer view with "Get Reading" button for updating register read displayed
- Customer configurable window
 - Customer sets month water usage budget,
 - Usage to date against goal for billing cycle
 - Estimated cycle end usage based on daily trending
 - Email notification of usage over a daily target
- Graphic display section:
 - Date range selection tool
 - Granularity selection, hourly, daily, monthly

Events Analysis Views/Reporting – This dashboard is designed to look for analytic events such as alarms, and tampers combined with factors such as time and usage.

- Start and end date filters
- Event type drop down filters
 - Leak, reverse flow, usage on inactive, zero consumption, alarms, tampers
- Tabular view of accounts with the filtered/prioritized event returns
- Map view of location selected
- Tabular listing of event history
- Graphical view of selected account showing selected event

Note: Reports will be generated in a Microsoft Office product (including Excel or Word) file format, capable of being edited by City.

District Metering Views/Reporting – This dashboard is designed to compare usage between groups of meters and a master meter(s).

- Start and end date filters

- Tools and status buttons
- Tabular view of master meters with information on number of service points under that meter along with usage and variance data
- Map view of master meter(s) and downstream meters
- Tabular view of tamper events associated with these meters
- Graphical comparison of usage from both master meter(s) and downstream meters

Comparative Analysis Views/Reporting – This dashboard is designed to compare a meter over different time periods, or multiple meters over different time periods.

Variables for comparison include:

- Service point/meter, date range, interval type (hourly, daily, weekly, monthly), graphical display between bar, line, stacked bar charts

Conservation Program Analysis Views/Reporting – This dashboard is designed to focus on viewing the effectiveness, as well as managing conservation measures.

Through the use of filters and analytic events this analytic gives the user visibility into such areas as:

- Low flow leaks, usage on non-water days, higher than expected consumption versus average daily usage
- Tabular view of accounts meeting search criteria with usage information
- Graphical view of usage for selected account listed in tabular view

Standard and Custom Reports with scheduling – standard and custom reporting functionality is supported in two ways within the Itron solution. The Itron solution comes with a number standard reports that can be scheduled for creation and delivery. The number of report types is not limited and can be saved for future use and scheduled based several options including:

- Report can be saved and or exported as PDF, XLS, CSV etc.
- Report destination location, email, file folder etc.
- Report recurrence and scheduling
- Each report is also available as a template that can be easily modified, saved and published in the solution. An example of these reports and associated template is shown below:
 - Customer usage & flow
 - Usage on inactive account
 - No usage on active account
 - Tamper
 - Low-flow leak
 - Reverse flow
 - Events report
 - Compound meter flow detail

Note: In addition to this standard reporting functionality the solution supports a data mining component that allows users to ask questions in plain language. The solution builds the necessary queries etc. to attempt to answer the users question. The resulting report and or view of the data can be saved as a reoccurring view or as the basis for a report template.

Network Application Software – Is designed to monitor and manage the network infrastructure. Reports available in the Choice Connect Application - Collection Engine are broken up into reports on the network and on the Endpoints.

Network

- Collector Exceptions Report
- Collectors Reporting Alarms
- Fixed Network Certificate Status Reports
- Repeater Exceptions Report

Endpoints

- Endpoint Alarms
- Endpoint Exceptions
- Endpoint Group Exceptions Summary Report
- Leak Report
- No Usage on Active Report
- Reverse Flow Report
- Tamper Report
- System Status Report
- Usage on Inactive Report

b) FIELD DEPLOMENT MANAGER – SOFTWARE AS-A-SERVICE

- Provide Field Deployment Manager Software-as-a-Service (FDM SAAS) based on a Fixed Network system of up to 300,000 endpoints, 126 collectors, and 483 repeaters.
- Provide for FDM SAAS system capability for use by third party vendor during 3-year Citywide AMI Implementation Project.
- Provide technical representatives to answer questions related to the use of FDM SAAS, including assisting the City with problems it may experience with using FDM SAAS, and offering recommendation to the City for fully utilizing FDM SAAS.

Service Level Reporting

Vendor will provide regular Service Level reports to the City. KPI reporting will be made available to the customer monthly and include the following:

- Application Availability

- System Changes and Updates
- Incident reporting including root cause analysis, resolution and preventive measures

Security

With respect to Customer Data that Vendor may have access to, transport, process, or use in providing FDM SAAS to the City, Vendor shall maintain a formal security program during FDM SAAS term in accordance with Vendor policies designed to: (i) protect the security and integrity of Customer Data; (ii) protect against threats or hazards to the security of FDM SAAS, and to (iii) prevent unauthorized access to FDM SAAS by third-parties and Vendor personnel.

Vendor will allow City to use SAML 2.0 protocol for sign in (OKTA). Security Logs should be able to be sent to the City's SIEM solution, or Vendor must provide the City with security logs on demand.

Vendor shall have security patches installed within 30 days of patch release and Critical patches installed within 24 hours of patch release.

Planned Maintenance. Planned maintenance whenever reasonably practicable will be performed during off-business hours between 12:00 p.m. to 6:00 a.m., with as little disruption to the City's use of FDM SAAS as possible, and unplanned maintenance, whenever reasonably practicable, shall also be performed during off-business hours between 6:00 p.m. and 6:00 a.m.

Minimum Disruption. If FDM SAAS is suspended or restricted, Vendor will use reasonable efforts to ensure that there is minimum disruption to FDM SAAS and shall use its commercially reasonable efforts to promptly reinstate it after the condition has been alleviated.

Operations Monitoring.

Tier One Operator is onsite at Data Center 24 by 7 monitoring production systems.

Performance Services Level Remedy

Corrective Action. In the event that Vendor fails to meet the Application Availability Service Level in any given month, Vendor's sole obligation is to (1) provide the City with an incident report, and (2) bring FDM SAAS into compliance with the Application Availability Service Level by the conclusion of the next measurement month.

Termination Option: Three Consecutive Failures. In the event Vendor does not meet the Application Availability Service Level for three consecutive months, the City may terminate its FDM SAAS subscription upon seven (7) days' prior written notice to Vendor without any liability whatsoever, with the exception of fees for FDM SAAS rendered through the termination effective date.

Business Continuity. Vendor uses a fault tolerant architecture virtualized to providing high availability infrastructure maximizing system availability. Daily system and database backups are performed and stored on-site and at a secure off-site facility. System backups and snapshots are taken after any change to the system. Weekly backup written to removable media remain on site and are overwritten after seven days and then stored off-site for two weeks. Monthly backups are stored off site for 13 months. The system can be easily recovered from the backup in an event of a disaster.

Backup are handled and exchanged using a defined procedure and agreement with a storage partner. All outdated tapes and data are carefully disposed of according to our defined standard operating procedures. All incidents requiring system recovery will be required to adhere to the incident handling and Vendor's Crisis Action Plan Standard Operating procedures.

Standard off-site recovery is included with each production system made available to the City using recovery sites with qualified infrastructure services. Customer-specific off-site recovery options are available upon request and quoted for system recover point and recovery time objectives specified by the customer.

Incident recovery performance Service Levels are defined in the following table:

Business Continuity and Recovery	Production Performance Recover Objectives after Identification of the incident
On Site Recovery Time for restore from on-site backup (hours)	4
On Site Recovery Time for backup restore from Off-Site backup (hours)	12
On Site Recovery Time for hardware failure(hours)	12
Standard Off-Site Recovery for Applications for City business operations (business days)	15

C. APPLICATION AVAILABILITY SERVICE LEVEL

Definition of Application Availability. "Application Availability" is a measure of the extent to which Software-as-a-Service is operational, functional and usable.

Application Availability Performance Metric.

Application	Production Performance Level
<i>All applications for which Software-as-a-Service is provided.</i>	99.5%

Application Availability Performance Formula. Application Availability in the live production-level environment is measured daily. Application Availability equals the hours Vendor's Software-as-a-Service platform is available divided by 24 hours.

Exclusions. The calculation of Application Availability shall not include scheduled maintenance periods, unscheduled emergency maintenance, incident investigations (e.g. accidents or other investigations that prohibit the City or Vendor in performing tasks to remedy any errors), outage time caused by declarations of force majeure, internet network delays or failures (including the restricted or denied access attributable to the City's internet service provider), telecommunications or network delays or failures, computer failures that could not reasonably have been prevented by Vendor, acts of vandalism (such as network intrusions and denial of service attacks), or other causes beyond Vendor's reasonable control.



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Maintenance Proposal Pricing

Date of Quote: 3/9/2020

ATTACHMENT 1

36590 - City of San Diego, CA
 9192 Topaz Way
 San Diego, CA 92123-1119

Hardware	Qty	Component Name	Start	End	Number of Year 1 Months	Yr 1 Annual Fee/Unit	Agreement Dates			
							Yr1	Yr2	Yr3	
			Sept. 1, 2019- Aug. 31, 2020	Sept. 1, 2020- Aug. 31, 2021	Sept. 1, 2021- Aug. 31, 2022					
Current										
SC00008039	475	Repeater 100	9/1/2019	8/31/2022	12	\$ 85.20	\$ 40,470.00	\$ 42,493.50	\$ 44,618.18	
	8	Repeater 100	9/1/2019	8/31/2022	12	\$ 76.44	\$ 611.52	\$ 642.10	\$ 674.20	
	113	CCU 100	9/1/2019	8/31/2022	12	\$ 141.96	\$ 16,041.48	\$ 16,843.55	\$ 17,685.73	
	4	CCU 100	9/1/2019	8/31/2022	12	\$ 127.32	\$ 509.28	\$ 534.74	\$ 561.48	
	6	CCU 100	9/1/2019	8/31/2022	12	\$ 123.60	\$ 741.60	\$ 778.68	\$ 817.61	
	1	CCU 100	9/1/2019	8/31/2022	12	\$ 142.32	\$ 142.32	\$ 149.44	\$ 156.91	
	2	CCU 100	9/1/2019	8/31/2022	12	\$ 120.00	\$ 240.00	\$ 252.00	\$ 264.60	
SC00009628	2	FC3 MULTIDOCK - FC300 Multi Dock	9/1/2019	12/31/2021	12	\$ 224.64	\$ 449.28	\$ 471.74	\$ 165.12	
	5	FC3 MULTIDOCK - FC300 Multi Dock	9/1/2019	12/31/2021	12	\$ 207.72	\$ 1,038.60	\$ 1,090.53	\$ 381.60	
	24	FC3SRIMAGE - FC300, SRRead Radio, Imager, GPS	9/1/2019	12/31/2021	12	\$ 499.68	\$ 11,992.32	\$ 12,591.94	\$ 4,407.36	
	10	FC3SR - FC300, SRRead Radio	9/1/2019	12/31/2021	12	\$ 508.92	\$ 5,089.20	\$ 5,343.66	\$ 1,870.40	
	1	MC3 RF Unit	9/1/2019	8/31/2022	12	\$ 2,725.68	\$ 2,725.68	\$ 2,861.96	\$ 3,005.06	
SC00009629	22	FC3IMAGWLAN-FC300 WLAN, Imager, GPS	9/1/2019	12/31/2021	12	\$ 572.40	\$ 12,592.80	\$ 13,222.44	\$ 4,627.92	
	7	FC3 MULTIDOCK - FC300 Multi Dock	9/1/2019	12/31/2021	12	\$ 224.64	\$ 1,572.48	\$ 1,651.10	\$ 577.92	
Hardware Subtotal						\$	\$ 94,216.56	\$ 98,927.39	\$ 79,814.09	
HW Total										\$ 272,958.04
Software										
Current										
SC00009628	1	Mobile Collector Software	9/1/2019	12/31/2019	4	\$ 433.56	\$ 433.56	\$ -	\$ -	
SC00009629	1	MVRS and FCS Software Maintenance (as transitioned)	9/1/2019	8/31/2022	12	\$ 13,463.88	\$ 13,463.88	\$ 14,137.074	\$ 14,843.93	
Software Subtotal						\$	\$ 13,897.44	\$ 14,137.07	\$ 14,843.93	
SW Total										\$ 42,878.44

Managed Services

Current

SC00008038	1	Network Software PROD, SaaS	9/1/2019	8/31/2022	12	\$ 78,548.17	\$ 78,548.17	\$ 80,904.62	\$ 83,331.75
	1	Network Software TEST, SaaS	9/1/2019	8/31/2022	12	\$ 78,548.17	\$ 78,548.17	\$ 80,904.62	\$ 83,331.75
	1	Iron Analytics Software PROD, SaaS	9/1/2019	8/31/2022	12	\$ 32,440.88	\$ 32,440.88	\$ 33,414.11	\$ 34,416.53
	1	Iron Analytics Software TEST, SaaS	9/1/2019	8/31/2022	12	\$ 22,624.69	\$ 22,624.69	\$ 23,303.43	\$ 24,002.53
	1	Field Deployment Manger Software PROD, SaaS	9/1/2019	8/31/2022	12	\$ 75,972.13	\$ 75,972.13	\$ 78,251.29	\$ 80,598.83
		SaaS Subtotal				\$ 288,134.04	\$ 288,134.04	\$ 296,778.06	\$ 305,681.40
		SaaS Total					\$	\$	\$ 890,593.50
		Year to Year Totals				\$	\$ 396,248.04	\$ 409,842.52	\$ 400,339.42
		Total Maintenance / Service Fees (USD)							\$ <u><u><u>1,206,429.98</u></u></u>

Comments and/or Assumptions:

- 1) Iron's three year Maintenance Renewal offer for the City of San Diego, for existing HW, SW Maintenance and Managed Services.
- 2) FC300 equipment will be End of Supported on December 31st, 2021. This is reflected in the figures above.
- 3) The current Service Level Agreement that Iron is operating under applies to this quote.
- 4) In regards to In-Field Network Maintenance the 3 Yr. pricing is based on 126 CCU and 483 Repeaters. This includes; CCU 4G upgrade & battery exchange over 3 year period.
- 5) If the number of Network or Hardware devices increase, then the pricing must be re-addressed and updated.
- 6) This attachment A pricing is an estimate; system rounding may change the final pricing.
- 7) All fees are \$USD.

Customer Signature of Acceptance: _____ **Date:** _____

****This is not an invoice**
Prices Valid for 90 Days**



Knowledge to Shape Your Future

Maintenance Proposal Pricing

Date of Quote: 3/9/2020

36590 - City of San Diego, CA
9192 Topaz Way
San Diego, CA 92123-1119

Hardware	Qty	Component Name	Agreement Dates		Yr 1 Annual Fee/Unit	Yr 1 Nov. 1, 2019- Oct 31, 2020	Yr 2 Nov. 1, 2020- Oct. 31, 2021	Yr 3 Nov. 1, 2021- Oct. 31, 2022
			Start	End				
			Number of Year 1 Months					
Current SC00011577		Itron Total AMI Managed Services - In-field Network Maintenance	11/1/2019	10/31/2022	\$ 392,761.11	\$ 392,761.11	\$ 404,543.94	\$ 416,680.26
Year to Year Totals						<u>\$ 392,761.11</u>	<u>\$ 404,543.94</u>	<u>\$ 416,680.26</u>
Total Maintenance / Service Fees (USD)								<u><u>\$ 1,213,985.31</u></u>

Comments and/or Assumptions:

- 1) Itron's three year Maintenance Renewal offer for the City of San Diego - In-Field Network
- 2) The current Service Level Agreement that Itron is operating under applies to this quote.
- 3) This attachment A pricing is an estimate; system rounding may change the final pricing.
- 4) All fees are \$USD.

Customer Signature of Acceptance: _____ Date: _____

UPDATED / REVISED

EXHIBIT B



THE CITY OF SAN DIEGO

GENERAL CONTRACT TERMS AND PROVISIONS

APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

**ARTICLE I
SCOPE AND TERM OF CONTRACT**

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

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

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

**ARTICLE II
CONTRACT ADMINISTRATOR**

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

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

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

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

ARTICLE III COMPENSATION

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

3.2 Invoices.

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

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 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 Reserved.

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.

Itron will have no obligation for any infringement Claim to the extent that the Claim results from (i) the combination, operation or use of any product or service provided by Itron with any product or service (including third-party software and equipment) not provided by Itron, (ii) any modification to products or services made without Itron’s prior written consent, (iii) failure to use updated or modified products or services as provided by Itron, (iv) use of any release of Itron software or any firmware other than the most current release made available to Customer, or (v) use of products or services not in accordance with this Agreement and applicable Documentation, (vi) any modification to products or services by a person other than Itron or an authorized representative of Itron, or (vii) Itron’s compliance with any designs, specifications, or instructions provided by Customer. In addition, Itron shall not be liable for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

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, or employees.

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, 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 claim.

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, and employees 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 claims related to this contract, Contractor’s GLC insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, and employees. Any CGL insurance or self-insurance maintained by City, its officers, officials, or employees 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 three (3) 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 three (3) 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. 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.

7.6 Reserved.

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.

ARTICLE XIV LIMITATION ON DAMAGES

14.1 Waiver of Consequential Damages. IN NO EVENT WILL EITHER PARTY, ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES OR OTHER REPRESENTATIVES BE LIABLE UNDER ANY CONTRACT NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR COVER OR FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL (INCLUDING LOSS OF CORRUPTION OF DATA OR LOSS OF REVENUE, SAVINGS OR PROFITS) OR EXEMPLARY DAMAGES, EVEN VENDOR/INSTALLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. VENDOR/INSTALLER'S PRICING REFLECTS THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.

14.2 Cap on Liability. EXCEPT FOR PERSONAL INJURY OR PROPERTY DAMAGE COVERED BY SECTION 7.1 (INDEMNIFICATION) OR ANY PROPERTY DAMAGE TO CITY OWNED PROPERTY THAT VENDOR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS. THE AGGREGATE LIABILITY OF VENDOR/INSTALLER AND ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES OR OTHER REPRESENTATIVES, ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT – WHETHER UNDER CONTRACT LAW, WARRANTY OR OTHERWISE – SHALL NOT TO EXCEED \$15,300,000.00 (USD). VENDOR / INSTALLER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND LIMITATION OF LIABILITY.

EXHIBIT C
CITY REQUIRED FORMS

Contractor Standards Pledge of Compliance

Updated Business Tax Certificate

Equal Opportunity Contracting forms, including Contractors Certification of Pending Actions and Work Force Report

Updated Insurance Certificates with all endorsements

EXHIBIT D

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

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

A. PREVAILING WAGES. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, Bidder and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code Chapter 2, Article 2, Division 42. Bidder must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

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

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

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

of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

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

3. Payroll Records. Bidder and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Bidder shall require its subcontractors to also comply with section 1776. Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City. Bidder and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

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

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

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

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

8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when

payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

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

9.1. A Bidder's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

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

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

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

11. List of all Subcontractors. The City may ask Bidder for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers,

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

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

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

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

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