DUPLICATE ORIGINAL

AGREEMENT BETWEEN

THE CITY OF SAN DIEGO

AND

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, UNIVERSITY OF CALIFORNIA, SAN DIEGO'S SCRIPPS INSTITUTION OF OCEANOGRAPHY

FOR

REAL TIME OCEAN OBSERVING SYSTEM FOR THE POINT LOMA & SOUTH BAY OCEAN OUTFALLS

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AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, UNIVERSITY OF CALIFORNIA, SAN DIEGO'S SCRIPPS INSTITUTION OF OCEANOGRAPHY FOR REAL TIME OCEAN OBSERVING SYSTEM FOR THE POINT LOMA AND SOUTH BAY OCEAN OUTFALLS

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and The Regents of the University of California, University of California, San Diego's Scripps Institution of Oceanography [University].

RECITALS

The City's EMTS Marine Biology Lab would like to obtain the expertise and services of the Ocean Time Series Group (OTSG) of the University of California, San Diego's Scripps Institution of Oceanography (SIO) in order to significantly enhance its environmental monitoring in support of the Point Loma Ocean Outfall and the South Bay Ocean Outfall. OTSG will construct moorings and provide real-time data transfer capabilities as well as other services more fully set forth in the Scope of Services attached hereto (the Services).

The University has the expertise, experience and personnel necessary to provide the Services. The City and the University [Parties] want to enter into an Agreement whereby the City will retain the University to provide, and the University shall provide, the Services.

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

ARTICLE I
UNIVERSITY SERVICES

The above-listed recitals are true and correct and are hereby incorporated by reference.

1.1 Scope of Services. The University shall perform the Services as set forth in the written Scope of Services (Exhibit A) at the direction of the City.

1.2 Contract Administrator. The Public Utilities Department (Department) is the contract administrator for this Agreement. The University shall provide the Services as agreed with the designated representative of the Department. The City's designated representative will communicate with the University on all matters related to the administration of this Agreement and the University's performance of the Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. However, when this Agreement refers to an act or approval to be performed by City, that act or

approval shall be performed by the Mayor or his designee, unless the Agreement specifies otherwise.

1.3 City Modification of Scope of Services. The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the University's cost of, or the time required for, the performance of any of the Services, the University shall immediately notify the City. The Parties will agree to an equitable adjustment to the University's compensation or time for performance, provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement.

1.4 Written Authorization. Prior to performing any Services, the University shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the University shall immediately advise the City in writing of any recommended change in the Scope of Services (Exhibit A), Compensation and Fee Schedule (Exhibit B), or Time Schedule (Exhibit C), and shall obtain the City's written consent with instruction implementing the change prior to making any changes. In no event shall implementation of the City's consent with instructed changes be construed to relieve the University from its duty to render all Services in accordance with applicable laws.

1.5 Reserved.

1.6 Reserved.

ARTICLE II
DURATION OF AGREEMENT

2.1 Term of Agreement. 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. Unless otherwise terminated, it shall be effective until completion of the Scope of Services or **December 31, 2016** whichever is the earliest but not to exceed five years unless approved by City ordinance.

2.2 Time of Essence. Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services (Exhibit A) is set forth in the Time Schedule (Exhibit C).

2.3 Notification of Delay. The University shall immediately notify the City in writing if the University experiences or anticipates experiencing a delay in performing the Services within the time frames set forth in the Time Schedule (Exhibit C). The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay.

2.4 Delay. If delays in the performance of the Services are caused by unforeseen events beyond the control of the Parties, such delay may entitle the University to a reasonable extension of time, but such delay shall not entitle the University to damages or additional compensation. Any such extension of time must be approved in writing by the City. Conditions

that may constitute such a delay include but are not limited to: 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 University's work; inability to obtain materials, equipment, or labor; equipment malfunction; required additional Services; or other specific reasons agreed to between the City and the University; provided, however, that: (a) this provision shall not apply to, and the University shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the University; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the University to an extension of time unless the University furnishes the City, within 30 days, documentary proof satisfactory to City of the University's inability to obtain materials, equipment, or labor.

2.5 City's Right to Suspend for Convenience. The City may, at its sole option and for its convenience, suspend all or any portion of the University's performance of the Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the University of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the University for all allowable costs incurred for all work performed through the effective suspension date, and for all outstanding obligations which cannot be canceled. Thereafter, the City may rescind such suspension by giving written notice of rescission to the University. The City may then require the University to resume performance of the Services in compliance with the terms and conditions of this Agreement; provided, however, that the University shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 Either Party's Right to Terminate for Convenience. Either party may, at its sole option and for its convenience, terminate all or any portion of the Services agreed to pursuant to this Agreement by giving sixty (60) days' written notice of such termination to the other party. Such notice shall be delivered by certified mail with return receipt for delivery to the sender. Upon the giving of notice of termination by City, as of the effective termination date the University shall exert reasonable efforts to limit or terminate any outstanding commitments. City shall reimburse University for all allowable costs reasonably incurred by it for all work performed through the effective termination date, and for all outstanding obligations which cannot be canceled. Such obligations may include salary and fringe benefits (including vacation accrual) of personnel engaged on the project during their severance period; purchase orders and other agreements with outside vendors which cannot be canceled; inventory storage and disposition costs for items produced under this Agreement; and indirect costs associated with these obligations. In addition, University shall also be reimbursed for those allowable additional costs which may be incurred as a result of termination, including any extraordinary clerical and accounting costs. University shall furnish, within ninety (90) days of the effective date of termination, a final invoice for settlement of all costs to be reimbursed. Upon the giving of notice of termination by University, as of the effective termination date City shall have no additional liability for any costs or obligations. In addition, University shall furnish, within sixty (60) days of the effective date of termination, a final summary of all funds expended and shall reimburse City for any funds paid by City to University in excess of total funds expended by University.

2.7 Reserved.

ARTICLE III

COMPENSATION

3.1 Amount of Compensation. The total compensation payable by the City to the University for performance of all Services rendered in accordance with this Agreement, including reasonably related expenses, shall not exceed **$1,188,055.00**. The compensation for the Scope of Services shall not exceed **$1,187,791.00** and the compensation for Additional Services (described in Section 3.2), if any, shall not exceed **$264.00**.

3.2 Additional Services. The City may require that the University perform additional Services [Additional Services] beyond those basic services described in the Scope of Services (Exhibit A). Prior to the University's performance of Additional Services, the City and the University must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule [Exhibit B]. The City will pay the University for the performance of Additional Services in accordance with Section 3.3.

3.3 Manner of Payment. The City shall pay the University in accordance with the Compensation and Fee Schedule [Exhibit B] subject to actual costs, but in no case to exceed the total contract amount in Section 3.1. For the duration of this Agreement, the University shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The University shall submit one invoice per calendar month listing expenses by major cost category in accordance with the projected costs in the Compensation and Fee Schedule. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

3.4 Reserved

3.5 Eighty Percent Notification. The University shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services appears that it may be greater than the maximum compensation for this Agreement.

3.6 Title to Equipment. The City shall retain title to equipment purchased or fabricated under this Agreement. Equipment is defined as tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

3.7 Reserved.

3.8 Reserved

ARTICLE IV
UNIVERSITY'S OBLIGATIONS

4.1 Performance Standards. The University agrees that the Services conducted under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent experts using the degree of care and skill ordinarily exercised by those practicing in the same field of Services in the State of California. Where approval by the City, the Mayor or his designee, or other representatives of the City is required, it is understood to be general approval only and does not relieve the University of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.1.1 Repair. The University does not offer warranties. The University agrees to repair at no additional cost to the City any instrumentation or equipment that fails, during the term of the Agreement and for each mooring that is deployed, up to one year after each mooring deployment, due to University's fabrication errors. The City is fully responsible for recovery and redeployment. Additionally, if any instrumentation or equipment fails for any other reasons, the University hereby assigns any manufacturer warranties or rights to the City and/or will assist the City in making these claims to the appropriate entities.

4.2 Right to Audit.

4.2.1 Access. The City retains the right to review and audit, and the reasonable right of access to University's premises to review and audit the University's or Subcontractor's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the University's premises, of any and all records created during and for the provision of the Services provided hereunder with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law. Personally identifiable information including personnel records shall not be provided to the City.

4.2.2 Audit. The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the University is in compliance with all requirements under this Agreement.

4.2.2.1 Cost Audit. If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.1.1 Accounting Records. The University shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The University shall make available to the City for review and audit all accounting records and documents, and any other financial data, created during and for the provision of the Services. Upon the City's request, the University shall submit exact duplicates of originals of all requested records to the City; the City shall reimburse the Contractor for copying costs.

4.2.3 Reserved.

4.2.4 Compliance Required before Mediation or Litigation. A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article VII is the University's full compliance with the provisions of this Section 4.2 within sixty days of the date on which the City mailed a written request to review and audit compliance.

4.3 Insurance. The University shall maintain its self-insurance program for the duration of this Agreement and maintain coverage equivalent to the types of coverage specified in Section 4.3.1. Maintenance of specified insurance coverage is a material element of this Agreement and University's failure to maintain coverage or to provide evidence of coverage during the term of this Agreement may be treated as a material breach of contract by the City.

Further, the University shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.3.1 Types of Insurance. At all times during the term of this Agreement, the University shall maintain insurance coverage as follows:

4.3.1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of $1 million per occurrence and subject to an annual aggregate of $2 million.

4.3.1.2 Commercial Automobile Liability. For all of the University's automobiles including owned, hired and non-owned automobiles, the University shall keep in full force and effect, automobile insurance providing coverage at least as broad for bodily injury and property damage for a combined single limit of $1 million per occurrence.

4.3.1.3 Workers' Compensation. For all of the University's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the University shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of $1 million of employers' liability coverage.

4.3.2 Reserved

4.3.3 Reserved

4.3.4 Reserved

4.3.5 Reservation of Rights. The City reserves the right, from time to time, to review the University's insurance coverage, limits, and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the University for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

4.3.6 Additional Insurance. The University may obtain additional insurance not required by this Agreement.

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

4.4 Subcontractors. No Subcontractors shall be used over the course of the Scope of Services of this Agreement as listed in Exhibit A..

4.4.1 Reserved.

4.5 Reserved.

4.6 Reserved.

4.7 Drug-Free Workplace. The University agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The University shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit E].

4.7.1 University's Notice to Employees. The University shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

4.7.2 Drug-Free Awareness Program. The University shall establish a drug-free awareness program to inform employees about all of the following:

4.7.2.1 The dangers of drug abuse in the work place.

4.7.2.2 The policy of maintaining a drug-free work place.

4.7.2.3 Available drug counseling, rehabilitation, and employee assistance programs.

4.7.2.4 The penalties that may be imposed upon employees for drug abuse violations.

4.7.3 Posting the Statement. In addition to Section 4.7.1 above, the University shall post the drug-free policy in a prominent place.

4.7.4 Reserved.

4.8 Product Endorsement. The University acknowledges and agrees to comply with the provisions of City of San Diego Administrative Regulation 95.65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

The City acknowledges and agrees to comply with the provisions of California Education Code 920000 which states The name "University of California" is the property of the state. No

person shall, without the permission of the Regents of the University of California, use this name, or any abbreviation of it or any name of which these words are a part, in any of the following ways:

(1) To designate any business, social, political, religious, or other organization, including, but not limited to, any corporation, firm, partnership, association, group, activity, or enterprise.

(2) To imply, indicate or otherwise suggest that any such organization, or any product or service of such organization is connected or affiliated with, or is endorsed, favored, or supported by, or is opposed by the University of California.

(3) To display, advertise, or announce this name publicly at, or in connection with, any meeting, assembly, or demonstration, or any propaganda, advertising, or promotional activity of any kind which has for its purpose or any part of its purpose the support, endorsement, advancement, opposition, or defeat of any strike, lockout, or boycott or of any political, religious, sociological, or economic movement, activity, or program.

4.9 Conflict of Interest. The University 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 City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

4.9.1 If, in performing the Services set forth in this Agreement, the University makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the University shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the University's relevant financial interests. The determination as to whether any individual members of the University's organization must make disclosures of relevant financial interests is set forth in the Determination Form [Exhibit H].

4.9.1.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The University shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the University is subject to a conflict of interest code. The University shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the University was subject to a conflict of interest code.

4.9.1.2 If the City requires the University to file a statement of economic interests as a result of the Services performed, the University shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

4.9.2 The University shall 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.

4.9.3 The University's personnel employed for the Services shall not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The University shall not recommend or specify any product, supplier, or contractor with whom the University has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.9.4 If the University violates any conflict of interest law or any of the provisions in this Section 4.9, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the University to potential liability to the City for attorneys fees and all damages sustained as a result of the violation.

4.10 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of the Services provided under this Agreement, upon the City's request, the University, its agents, officers, and employees agree to provide assistance in resolving the dispute or litigation. The University's assistance may include, but is not limited to, providing professional consultations on all the Services provided by the Agreement, including but not limited to, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.11 Compensation for Mandatory Assistance. The City will compensate the University for fees incurred for providing Mandatory Assistance via a separate agreement.

4.12 Attorney Fees Related to Mandatory Assistance. Whether or not the City will compensate the University for attorneys' fees related to Mandatory Assistance will be negotiated and determined, if necessary, by a separate agreement. This paragraph is not intended to be City's agreement to pay attorneys' fees only that it will negotiate with the University on this issue at a later date..

4.13 Reserved.

4.14 ADA Certification. The University hereby certifies [Exhibit K] that it agrees to comply with the American with Disabilities Act and the California Fair Employment and Housing Act (FEHA) which are incorporated into this Agreement by this reference.

4.15 Reserved.

ARTICLE V
RESERVED

ARTICLE VI

6.1 Indemnification and Hold Harmless Agreement. City agrees to defend, indemnify and hold University harmless from and against any and all claims, liability, loss, expense, or claims for injury or damages arising out of the performance of this Agreement, but only in

proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of City, its officers, agents or employees.

University agrees to defend, indemnify and hold City harmless from and against any and all claims, liability, loss, expense, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense,, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of University, its officers, agents, or employees.

ARTICLE VII
MEDIATION

7.1 Mandatory Non-binding Mediation. With the exception of Sections 2.5-2.7 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

7.2 Reserved.

7.3 Reserved.

7.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

7.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

7.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding."

ARTICLE VIII
INTELLECTUAL PROPERTY RIGHTS - RESERVED

ARTICLE IX
MISCELLANEOUS

9.1 Notices. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the

City shall be addressed to: **Adriano Feit, City of San Diego Marine Biology Laboratory, EMTS Division, Public Utilities Department**, 2392 Kincaid Road, San Diego, CA 92101, MS45, 619-758-2377, and notices to the University shall be addressed to: a) Administrative notices to **Andrea Lupu, Principal Contract and Grant Analyst, Scripps Institution of Oceanography**, 9500 Gilman Drive MC0210, La Jolla, CA 92093-0210, 202-253-9603, alupu@ucsd.edu and Technical notices to **Dr. Uwe Send, Ocean Time Series Group (Principal Investigator), UC San Diego/Scripps Institution of Oceanography**, 9500 Gilman Drive, La Jolla CA 92093-0210,phone: 1-858-822-6710, fax: 1-858-534-9820.

9.2 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

9.3 Non-Assignment. Neither party shall assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the other party's prior written approval. Any assignment in violation of this paragraph shall constitute grounds for termination for convenience under section 2.6 of this Agreement. In no event shall any putative assignment create a contractual relationship between the either party and any putative assignee.

9.4 Independent Contractors. The University and any Subcontractors employed by the University shall be independent contractors and not agents of the City.

9.5 University Principals. It is understood that this Agreement is for unique Services. Retention of the University's services is based on the particular professional expertise of a team of technical experts led by the following member(s) of the University's organization: Dr. Uwe Send ["Lead Technical Expert"] from the Ocean Time Series Group, SIO. Accordingly, performance of the Services may not be delegated to other parts or departments of the University's organization or to another Lead Technical Expert without the prior written consent of the City.

9.6 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the University, shall be deemed to be both covenants and conditions.

9.7 Compliance with Controlling Law. The University shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

9.8 Jurisdiction. The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California.

9.9 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

9.10 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

9.11 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.

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

9.13 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

9.14 Additional Consultants or Contractors. The City reserves the right to employ, at its own expense, such additional consultants or contractors as the City deems necessary to perform work or to provide similar Services.

9.15 Employment of City Staff. This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the University employs an individual in the Ocean Time Series Group of Scripps Institution of Oceanography (SIO) who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or Mayor in connection with the selection of the University.

9.16 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

9.17 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement 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 Agreement.

9.18 Signing Authority. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees

to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

9.19 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes 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 Agreement.

9.20 Consultant Evaluation. City will evaluate University's performance of Services using the Consultant Evaluation Form [Exhibit F].

9.21 Exhibits Incorporated. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

9.22 Survival of Obligations. All representations, indemnifications, and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the Professional Research and termination or completion of the Agreement.

9.23 Reserved.

9.24 Reserved.

9.25 Public Records. This contract is public document subject to the California Public Records Act, and as such may be subject to public review per Exhibit J (Regarding Information Requested under the California Public Records Act).

The remainder of this page has intentionally been left blank.

DUPLICATE ORIGINAL

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Resolution No. R-309845 authorizing such execution, and by the University.

Dated this 1st day of September, 2015.

THE CITY OF SAN DIEGO
Mayor or Designee

By: _____
W. Downs Prior
Principal Contract Specialist
Public Works Contracts

I HEREBY CERTIFY I can legally bind The Regents of the University of California, San Diego and that I have read all of this Agreement, this 11th day of MARCH, 2015.

By Sandra Varond
for: Andrea Lupu
Principal Contract and Grant Analyst,
SIO, UCSD

I HEREBY APPROVE the form of the foregoing Agreement this 2nd day of September, 2015.

JAN I. GOLDSMITH, City Attorney

By _____ for
Christine Leone
Deputy City Attorney

R- 309845

AGREEMENT EXHIBITS

Exhibit A - Scope of Services

Exhibit B - Compensation and Fee Schedule

Exhibit C - Time Schedule

Exhibit D - Reserved

Exhibit E - Consultant Certification for a Drug-Free Workplace

Exhibit F - Consultant Evaluation Form

Exhibit G - Reserved

Exhibit H - Determination Form

Exhibit I - Reserved

Exhibit J - Regarding Information Requested Under the California Public Records Act

Exhibit K - Americans With Disabilities Act (ADA) Compliance Certification

SCOPE OF SERVICES

1. Design and fabricate three moorings systems
   (a) Based on consultation with City staff, OTSG will custom design and build three mooring systems capable of being deployed and serviced from the City's 48 ft. monitoring vessel (*Oceanus*).
   (b) Moorings include one primary mooring for the Pt Loma outfall area (PLM1) to deployed at a depth of ~100m, one primary mooring for the South Bay outfall area (SBM1) at a depth of ~35m, and one spare (PLM2) of the larger 100m mooring design to serve as back-up for both regions.
   (c) Design and build costs will include full integration of several modular sensors and inductive modem technology into each mooring system as agreed upon via prior negotiations with City. Details of the hardware and instrumentation are found in Table 1 at the end of this document.
   (d) OTSG will provide all hardware, instrumentation and labor to build the PLM1 and SBM1 moorings, and everything except the sensor instrumentation for the PLM2 mooring. The City will be responsible for purchasing the PLM2 mooring instrumentation separately later.

2. Design fabrication instrument integration and testing of the mooring systems will be conducted in several phases.
   (a) Phase 1: The SBM1 mooring will be the first system designed, built and tested. If improvements or modifications are needed based on the results of field-testing, the necessary changes will be implemented into SBM1 as well as the remaining two mooring systems to be built (PLM1 and PLM2).
   (b) Phase 2: After making desired changes to the design and constructing PLM1 mooring will be designed and fabricated.
   (c) Phase 3: The third phase will involve continued testing of the SBM1 and PLM1 moorings, construction of the PLM2 back-up mooring, testing and QA of data systems and further training of City staff (see below)will occur.

3. Provide Data System Development:
   (a) Develop data management system for moorings.
   (b) Conduct initial data processing verifying data quality
   (c) Host data and post data to the OTSG website.

4. City staff will perform all labor associated with mooring deployment and the University will provide support for mooring deployment. Support Tasks may include, but are not limited to:
    (a) Logistics and planning for initial deployments.
    (b) Provide recommended deployment setting and or best practices.
    (c) Review common troubleshooting practices.

5. Provide City staff with training and technical support on real-time oceanographic mooring technology management and relevant analyses.

Table 1. Details the type of sensors and quantities found on each mooring.

Sensors	**SBOO** **# per mooring**	**PLOO** **# per mooring**
Microcat (T/S)	2	6
pCO2	1	1
ADCP	1	1
Turner Chl/CDOM	3	3
Uvilux BOD	1	2
Wipers for Turner	6	6
Wipers for Uvilux	1	2
SeapHox (pH, O2)	2	3
SUNA nitrate	2	2
Controller	3	3
Inductive telemetry system	1	1
Cellphone telemetry system	1	1

EXHIBIT B

COMPENSATION AND FEE SCHEDULE

Total funding for the project will not exceed $1,188,055

Cost Breakdown:

South Bay Mooring	SBM1 mooring	$425,698
Point Loma Mooring	PLM1 mooring	$535,338
Spare mooring	PLM2 spare mooring	$73,575
Data Processing	Develop Real-time capability and QA/QC the data	$153,180
Subtotal		**$1,187,791**
Additional Expenses		**$264**
Total Costs		**$1,188,055**

SBM1 Surface Buoy Cost Estimate - 40m			Same as Pt Loma except diff instruments and no development, recover anchor
Hardware			Cost per mooring
Item	**Qty/moor**	**Unit cost**	**Cost 1st moor**
Surface flotation	1	$4,000	$4,000
Buoy tower material	1	$5,000	$5,000
Instrument cages	2	$1,500	$3,000
Bridle, top/base ring material	1	$5,000	$5,000
Radar Reflector / Lights	1	$1,200	$1,200
Depressor weight 200lb	1	$500	$500
Benthos acoustic release	0	$11,192	$0
Anchor	1	$1,000	$1,000
Chain, 1 meter	20	$20	$400
Swivel, Stainless 5T WLL	1	$1,300	$1,300
Sling links, 3/4"	5	$20	$100
Shackles, 3/4"	10	$29	$285

Wire rope, 3/8" Nilspin, 1 meter	40	$10	$400
misc supplies	1	$2,000	$2,000
Hardware total			$24,185
Instruments			
Item	**Qty.**		**Cost (USD)**
Microcat	2	$4,665	$10,276
SeaCat	0	$10,200	$0
300 kHz ADCP	1	$25,465	$27,602
ProOceanus pCO2 Pro	1	$25,448	$27,984
Turner CDOM,CHlA	3	$5,000	$16,200
Uvilux BOD	1	$9,168	$10,151
wipers for Turner	6	$1,294	$8,700
wipers for Uvilux	1	$1,502	$1,883
Martz pH sensor + O2	2	$18,000	$36,000
nitrate	2	$28,172	$60,852
Instruments total			$199,648
Controller/Telemetry/Power			
Item	**Qty.**		**Capital Cost 1st unit (USD)**
Batteries	3	$1,640	$4,920
Controller board plus IMM	3	$1,500	$4,860
Controller housing	3	$2,400	$7,200
Inductive coupling and connectors	3	$1,140	$3,694
Cellphone telemetry hardware	1	$1,000	$1,000
Cables (sensors to controllers)	21	$250	$5,670
Controller/telem/power total			$27,344
Data Service			
cellphone data telemetry per month	100	$12	$1,200
Data Service total			$1,200

EXHIBIT B

Labor - Technical			
Item	**Qty.**		**Cost (USD)**
Mechanical Eng - Design	1 month		$11,000
Electrical Eng - Power/Contr/Telem	1 month		$9,000
Mechanical Eng - Assembly	1 month		$8,000
Machine shop labor	½ month		$6,500
Mechanial Eng - Instrument setup	1 month		$8,000
Mechanical Eng - Buoy refurb	1 month		$0
cleaning	1 week		$0
Staging/mob/demob	1 month		$6,000
Logistics/shipping/management	1 month		$7,600
Sensor maintenance/calibration	3 months		$0
Labor - technical total			$56,100
Labor - Data			
Item	**Qty.**		**Cost (USD)**
Data Proc./QC/Real time flow	1 month		$0
Data analysis/integration	1 month		$0
Labor - Data total			$0
Total Cost			$308,477
Coordination and Associated Fees			$117,221
SBM1 Total Cost			**$425,698**

PLM1 & PLM2 Surface Buoy Cost Estimate - 100m				
Hardware			Cost per mooring	
Item	**Qty/moor**	**Unit cost**	**Cost for PLM1**	**Cost of PLM2**
Surface flotation	1	$4,000	$4,000	$4,000
Buoy tower material	1	$5,000	$5,000	$5,000
Instrument cages	1	$1,500	$1,500	$1,500

Bridle, top/base ring material	1	$5,000	$5,000	$5,000
Radar Reflector / Lights	1	$1,200	$1,200	$1,200
Depressor weight 200lb	1	$500	$500	$500
Benthos acoustic release	0	$11,192	$0	$0
Anchor	1	$1,000	$1,000	$1,000
Chain, 1 meter	50	$20	$1,000	$1,000
Swivel, Stainless 5T WLL	1	$1,300	$1,300	$1,300
Sling links, 3/4"	5	$20	$100	$100
Shackles, 3/4"	10	$29	$285	$285
Wire rope, 3/8" Nilspin, 1 meter	100	$10	$1,000	$1,000
misc supplies	1	$3,000	$3,000	$0
Hardware total			$24,885	$21,885
Instruments	prices include sales tax			
Item	**Qty.**	**unit cost**	**Cost for PLM1 (USD)**	**Cost for PLM2**
Microcat	6	$4,665	$30,429	$0
SeaCat	0	$10,200	$0	$0
300 kHz ADCP	1	$25,465	$27,602	$0
ProOceanus pCO2 Pro	1	$25,448	$27,984	$0
Turner CDOM,CHlA	3	$5,000	$16,200	$0
Uvilux BOD	2	$9,168	$20,303	
wipers for Turner	6	$1,294	$8,700	
wipers for Uvilux	2	$1,503	$3,518	
Martz pH sensor + O2	3	$18,000	$54,000	$0
nitrate	2	$28,172	$60,852	$0
Instruments total			$249,588	$0
Controller/Telemetry/Power				
Item	**Qty.**	**unit cost**	**Capital Cost for PLM1**	**Capital Cost for PLM2**
Batteries	3	$1,640	$4,920	$1,640
Controller board plus IMM	3	$1,500	$4,860	$1,500
Controller housing	3	$2,400	$7,200	$2,400

EXHIBIT B

Inductive coupling and connectors	3	$1,140	$3,694	$1,140
Cellphone telemetry hardware	1	$1,000	$1,000	$1,000
Cables (sensors to controllers)	24	$250	$6,480	$250
Controller/telem/power total			$28,154	$7,930
Data Service				
cellphone data telemetry per month	100	$12	$1,200	$0
Data Service total			$1,200	$0
Labor - Technical	direct costs			
Item	**Qty.**		**Cost (USD)**	**Cost - duplicate**
Mechanical Eng - Design	2 months		$22,000	$0
Electrical Eng - Power/Contr/Telem	2 months		$18,000	$9,000
Mechanical Eng - Assembly	2 months		$16,000	$8,000
Machine shop labor	½ month		$6,500	$6,500
Mechanial Eng - Instrument setup	1 month		$8,000	$0
Mechanical Eng - Buoy refurb	1 month		$0	$0
cleaning	1 week		$0	$0
Staging/mob/demob	1 month		$6,000	$0
Logistics/shipping/management	1 month		$7,600	$0
Sensor maintenance/calibration	3 months		$0	$0
Labor - technical total			$84,100	$23,500
Labor - Data				
Item	**Qty.**		**Cost for PLM1 (USD)**	**Cost – for PLM2 (USD)**
Data Proc./QC/Real time flow	1 month		$0	$0
Data analysis/integration	1 month		$0	$0
Labor - Data total			$0	$0
Total Cost			$387,926	$53,315
Coordination and Associated Fees			$147,412	$20,260
PLM1 & PLM2 Total Cost			**$535,338**	**$73,575**

EXHIBIT B

Data Processing Development Effort			
Item	**Qty.**		**Cost (USD)**
set up automatic data transmission/reception	1 month		$9,000
set up parsing routines for each sensor	2 months		$16,000
set up data conversion, merging, calibration	1.5 months		$12,000
set up quality control for each sensor	2 months		$18,000
set up figures, data set for downloads, website	2 months		$18,000
test entire process, fix bugs, exercise system	1.5 months		$16,000
scientist validation and test use	2 months		$22,000
Labor - Data total			$111,000
Coordination and Associated Fees			$42,180
Total Labor Costs			**$153,180**

EXHIBIT C

TIME SCHEDULE

Project Schedule Summary:

(a) Phase 1: Design fabrication and deployment of SBM1 by summer 2015
(b) Phase 2: Design fabrication and deployment of PLM1 in winter 2015/2016 (Dec/Jan)
(c) Phase 3: Construction PLM2 and completion of testing/training by summer 2016

All contract activities to be completed by December 31,2016

EXHIBIT D

CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM CONSULTANT REQUIRMENTS

RESERVED

EXHIBIT E

UNIVERSITY CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: Real Time Ocean Observing System for the Point Loma and South Bay Ocean Outfalls

I hereby certify that I am familiar with the requirement of the Drug-free Work Place Act of 1988, and that: Scripps Institution of Oceanography
UCSD (The Regents of the University of California, University of California, San Diego)
Name under which business is conducted

has in place a drug-free workplace program that complies with said Act. I further certify that each subcontract agreement for this project contains language which indicates the SubUniversitys agreement to abide by the provisions of the Act.

Signed Sandra Varond

Printed Name Sandra Varond

Title Senior Contract and Grant Officer

Date March 11, 2015

EXHIBIT F

CITY OF SAN DIEGO

Consultant Performance Evaluation

The purpose of this form is to provide historical data to City staff when selecting consultants.

Section I

1. PROJECT DATA	2. CONSULTANT DATA
1a. Project (title, location):	2a. Name and address of Consultant:
1b. Brief Description:	2b. Consultant's Project Manager: Phone: ( )
1c. Budgeted Cost: $ WBS/IO:	

S3. CITY DEPARTMENT RESPONSIBLE	
3a. Department (include Division):	3b. Project Manager (address & phone): Phone: ( )

4. & 5. CONTRACT DATA (DESIGN PHASE ☐ OR CONSTRUCTION SUPPORT ☐)

4. **Design Phase**

Agreement Date: _____ Resolution #: R- _____ Initial Contract Amount 4a. $ _____ 4b. Prev. Amendment(s): $ _____

4c. Current Amendment: $ _____ / Number: _____ 4d. Total Agreement (4a. + 4b. + 4c.): $ _____

4d. Type of Work (design, study, as-needed services, etc.):	4e. Key Design Phase Completion Dates:				
	% of Design Phase Completion	%	%	100%	Final Construction
	Agreed Delivery Date:				Est. Completion:
	Actual Delivery Date:				Actual Completion:
	Acceptance of Plans/Specs.:				

5. **Construction Support**

5a. Contractor _____ Phone ( ) _____
(name and address)

5b. Superintendent _____

5c. Notice to Proceed _____ (date)	5f. Change Orders:		
5d. Working days _____ (number)	Errors/Omissions	_____ % of const. cost	$ _____
	Unforeseen Conditions	_____ % of const. cost	$ _____
5e. Actual Working days _____ (number)	Changed Scope	_____ % of const. cost	$ _____
	Changed Quantities	_____ % of const. cost	$ _____
	Total Construction Cost $ _____		

6. OVERALL RATING FOR DESIGN PHASE ☐ OR FOR CONSTRUCTION SUPPORT ☐

	Excellent	Satisfactory	Poor
6a. Quality of Plans/Specifications/As-Builts	☐	☐	☐
Compliance with Contract & Budget	☐	☐	☐
Responsiveness to City Staff	☐	☐	☐

6b. Overall Rating _____

7. AUTHORIZING SIGNATURES

7a. Project Manager _____ Date _____

7b. Section Head _____ Date _____

Section II — SPECIFIC RATING

DESIGN EVALUATION	EXCELLENT	SATISFACTORY	POOR	N/A
Plans/Specifications accuracy	☐	☐	☐	☐
Plans/Specs coordination	☐	☐	☐	☐
Plans/Specs properly formatted	☐	☐	☐	☐
Code Requirements covered	☐	☐	☐	☐
Adherence to City design standards	☐	☐	☐	☐
Attitude toward Client and review bodies	☐	☐	☐	☐
Follows direction and chain of responsibility	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐

COMPLIANCE WITH CONTRACT & BUDGET	EXCELLENT	SATISFACTORY	POOR	N/A
Reasonable agreement negotiation	☐	☐	☐	☐
Adherence to fee schedule	☐	☐	☐	☐
Adherence to project budget	☐	☐	☐	☐
Timely responses	☐	☐	☐	☐
Timeliness in notifying City of major issues	☐	☐	☐	☐
Work product delivered on time	☐	☐	☐	☐
	☐	☐	☐	☐

CONSTRUCTION SUPPORT EVALUATION	EXCELLENT	SATISFACTORY	POOR	N/A
Drawing reflect existing conditions	☐	☐	☐	☐
As-Built drawings	☐	☐	☐	☐
Quality design	☐	☐	☐	☐
Change orders due to design deficiencies are minimized	☐	☐	☐	☐
Timely responses	☐	☐	☐	☐
Attitude toward Client and review bodies	☐	☐	☐	☐
Follows direction and chain of responsibility	☐	☐	☐	☐
Work product delivered on time	☐	☐	☐	☐
Timeliness in notifying City of major problems	☐	☐	☐	☐
Resolution of Field problems	☐	☐	☐	☐
Value Engineering Analysis	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐
	☐	☐	☐	☐

Section III — SUPPLEMENTAL INFORMATION

(Please ensure to attach additional documentation as needed.)

Item_____: _____

_____

Item_____: _____

_____

Item_____: _____

_____

Item_____: _____

_____

(*Supporting documentation attached: Yes ☐ No ☐)

3

EXHIBIT G

CONTRACTOR STANDARDS PLEDGE OF COMPLIANCE

RESERVED

EXHIBIT H

DISCLOSURE DETERMINATION FOR CONSULTANT
(Form CC-1671)

Use the "Disclosure Determination for Consultant" form (CC-1671) to report the disclosure requirement for any Consultant hired to provide research to the City of San Diego or the boards, commissions and agencies that fall under the City of San Diego's jurisdiction.

2 California Code of Regulations defines a "Consultant" as an individual who, pursuant to a contract with a state or local government agency, either makes a governmental decision or serves in a staff capacity with the state or local government agency and in that capacity participates in making a governmental decision. For the complete definition of "Consultant", refer to Government Code section 18701(a)(2). This section can be located at:

http://www.fppc.ca.gov/index.html?ID=52&r_id=/legal/regs/18701.htm

The "Disclosure Determination for Consultant" form is completed for all Consultants under contract with the City of San Diego or the boards, commissions and agencies that fall under the City of San Diego's jurisdiction. Please follow the step-by-step directions:

1. List the department, board, commission or agency requesting the Consultant service.
2. List the consulting company. If known, also list the individual(s) who will be providing the Consultant research.
3. List the mailing address.
4. List the e-mail address of individual(s) providing the Consultant service.
5. Provide the date the individual(s) will start providing the Consultant service.
6. List all duties/responsibilities the Consultant will have. This list will enable you to determine the disclosure requirement for the Consultant.
7. Determine the Consultant's disclosure category. Your Consultant should be required to disclose only those economic interests which could potentially create a conflict of interest as he/she performs his/her contractual obligations. For ideas about possible disclosure categories, review those in your department's, board's, commission's or agency's conflict of interest code, available at:

   www.sandiego.gov/city-clerk/elections/eid/codes.shtml

Please fill out the entire "Disclosure Determination for Consultant" form, and have it signed by the appropriate authority. (Individuals with signing authority are described in your conflict of interest code as part of the disclosure requirement for Consultants.) Forward the original form to the City Clerk's Office, MS 2A.

EXHIBIT H

DISCLOSURE DETERMINATION FOR CONSULTANT

**Must be signed by department director, agency president or other individual authorized by the appropriate conflict of interest code regarding Consultants.*

1. Department / Board / Commission / Agency Name: Public Utilities Departments

2. Name of Specific Consultant & Company: Dr. Uwe Send, Ocean Time Series Group

3. Address, City, State, ZIP: UCSD-Scripps Institution of Oceanography, 9500 Gilman Drive 0230, La Jolla CA 92093-0230
Email: usend@ucsd.edu

4. Project Title (as shown on 1472, "Request for Council Action"): Oceanographic Mooring Systems for the Point Loma and South Bay Ocean Outfalls (H156332)

5. Consultant Duties for Project: Design, fabricate and integrate sensors and deploy 2 oceanographic moorings and build a third backup mooring. Develop data processing for automatic transmission/reception and quality control for instrumentation and data. House the data and make available on their website for download. Provide training and technical support to City staff.

6. Disclosure Determination **[select applicable disclosure requirement]**:

☒ Consultant will not be "making a governmental decision" or "serving in a staff capacity." No disclosure required.

- or -

☐ Consultant will be "making a governmental decision" or "serving in a staff capacity." Consultant is required to file a Statement of Economic Interests with the City Clerk of the City of San Diego in a timely manner as required by law. **[Select Consultant's disclosure category.]**

☐ Full: Disclosure is required pursuant to the broadest disclosure category in the appropriate Conflict of Interest Code.

- or -

☐ Limited: Disclosure is required to a limited extent. **[List the specific economic interests the Consultant is required to disclose.]**

By: [signature], Deputy Director
[Name/Title]*

2-4-2015
[Date]

Once completed, with all questions answered and an authorized signature affixed, please forward the original form to the City Clerk's Office, MS 2A. Keep a copy with the contract.

EXHIBIT H

DEFINITION OF "CONSULTANT"

2 California Code of Regulations defines a "Consultant" as an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the City to enter into, modify, or renew a contract provided it is the type of contract that requires City approval;
5. Grant City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
6. Grant City approval to a plan, design, report, study, or similar item;
7. Adopt, or grant City approval of, policies, standards, or guidelines for the City, or for any subdivision thereof; or

(B) Serves in a staff capacity with the City and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code.

An individual "serves in a staff capacity" if he or she performs substantially all the same tasks that normally would be performed by staff member of a governmental entity. In most cases, individuals who work on only one project or a limited range of projects for an agency are not considered to be working in a "staff capacity." The length of the individual's service to the agency is relevant. Also, the tasks over the relevant period of time must be substantially the same as a position that is or should be specified in the City's conflict of interest code.

An individual "participates in making a governmental decision" if he or she: (1) negotiates, without substantive review, with a governmental entity or private person regarding the decision; or (2) advises or makes recommendations to the decision-maker, by conducting research or an investigation, preparing or presenting a report, analysis or opinion which requires the exercise of judgment on the part of the individual and the individual is attempting to influence the decision.

Regulation 18701 (a)(2)
http://www.fppc.ca.gov/index.html?ID=52&r_id=/legal/regs/18701.htm
1/28/2006

EXHIBIT I

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE

RESERVED

EXHIBIT J

REGARDING INFORMATION REQUESTED UNDER THE CALIFORNIA PUBLIC RECORDS ACT

The undersigned duly authorized representative, on behalf of the named Contractor declares and acknowledges the following:

The contents of this contract and any documents pertaining to the performance of the contract requirements/Scope of Services resulting from this contract are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.

If a Contractor submits information **clearly marked** confidential or proprietary, the City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the **responsibility of the Contractor** to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the California Public Records Act, should the City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, the Contractor must provide a **specific and detailed legal basis, including applicable case law** that **clearly establishes** the requested information is exempt from the disclosure requirements of the California Public Records Act.

If the Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and the **Contractor will hold the City harmless** for release of this information.

It will be the **Contractor's obligation to defend**, at Contractor's expense, any legal actions or challenges seeking to obtain from the City any information requested under the California Public Records Act withheld by the City at the Contractor's request. Furthermore, the Contractor shall **indemnify** the City and **hold it harmless** for any claim or liability, and **defend any action** brought against the City, resulting from the City's refusal to release information requested under the Public Records Act withheld at Contractor's request.

Nothing in this Agreement creates any obligation for the City to notify the Contractor or obtain the Contractor's approval or consent before releasing information subject to disclosure under the California Public Records Act.

Scripps Institution of Oceanography
UCSD (The Regents of the University of California, University of California, San Diego)
Name of Firm

Sandra Varond
Signature of Authorized Representative

Sandra Varond
Printed/Typed Name

March 11, 2015
Date

EXHIBIT K

UNIVERSITY CERTIFICATION

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

PROJECT TITLE: Real Time Ocean Observing System for the Point Loma and South Bay Ocean Outfalls

I hereby certify that the University of California-San Diego is familiar with the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA), and that;

Scripps Institution of Oceanography
UCSD (The Regents of the University of California, University of California, San Diego)
(Name under which business is conducted)

has in place workplace program that complies with said policies. I further certify that each subcontract agreement for this project contains language which indicates the subcontractor's agreement to abide by the provisions of the Acts as outlined.

Signed Sandra Varond

Printed Name Sandra Varond

Title Senior Contract and Grant Officer