

Meeting Date: 5/26/2015

Report Type: Consent

Report ID: 2015-00363

Title: Agreement: Hadronex SmartCover® Real Time Continuous Monitoring System for Manholes

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager or the City Manager's designee to 1) execute an agreement with Hadronex, Inc., for purchase of the Hadronex SmartCover® Real Time Continuous Monitoring System for Manholes, for an initial term through December 31, 2016, with the option to extend for up to two additional one-year terms, for a total amount not to exceed \$194,118.49 for the initial and extended terms; and 2) approve the one year extensions provided that funding is available for this purpose in the approved budget for the applicable year.

Contact: Michael Malone, Operations Manager, (916) 808-6226; Ken Swartz, Program Specialist, (916) 808-6276, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Logistics

Dept ID: 14001451

Attachments:

1-Description/Analysis

2-Background

3-Change of 3T Status & Sole Source

4-Supplies Agreement

City Attorney Review

Approved as to Form

Joe Robinson

5/5/2015 10:53:31 AM

Approvals/Acknowledgements

Department Director or Designee: Mike Malone - 4/23/2015 4:37:55 PM

Description/Analysis:

Issue: On October 22, 2013, the City Council suspended competitive bidding for the purchase of Hadronex SmartCover® Real Time Continuous Monitoring System for Manholes, which detect potential sanitary sewer overflows (SSOs) and combined sewer overflows (CSOs) through remote monitoring. City Council Resolution No. 2013-0343 found that it was in the City's best interests to suspend competitive bidding to purchase the Hadronex system based on City's staff's testing and research, including a pilot testing program, which found that no other competitors manufactured and offered the technology and performance offered by the Hadronex SmartCover® system. The City Council awarded a contract to purchase the Hadronex system to 3T Equipment Company, which was the only authorized distributor for the Hadronex system in this area. The contract with 3T had an initial term through December 31, 2016, with up to two one-year extension options.

In February of this year, Hadronex, Inc. (which manufactures the Hadronex system) notified the City that 3T Equipment Company would no longer be authorized to distribute or support the Hadronex system, and offered to contract directly with the City to supply and support the Hadronex system. City staff is requesting approval of a new contract with Hadronex Inc. to replace the existing contract with 3T Equipment Company.

Policy Considerations: Hadronex, Inc. has severed its business relationship with 3T Equipment Company and a new contract is needed to purchase the necessary parts, equipment, and network access for the Hadronex system directly from Hadronex, Inc.. The City Council previously suspended competitive bidding to purchase the Hadronex system in 2013.

Economic Impacts: None

Committee/Commission Action: Not Applicable

Environmental Considerations:

California Environmental Quality Act (CEQA): The Community Development Department, Environmental Services Manager has determined that the proposed actions are exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines. The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed actions also constitute ongoing administrative activities that are not a "project" under CEQA (CEQA Guidelines Section 15378(b)).

Sustainability Considerations: This purchase is consistent with the 2035 General Plan and the goals and targets of the City's Sustainability Master Plan by furthering the goal of continuing to reduce sanitary sewer overflows.

Rationale for Recommendation: The DOU has an ongoing need to purchase manhole monitoring system equipment to ensure continuation of services to its customers and compliance with regulatory mandates.

Financial Considerations: The City's contract with 3T Equipment Company had a not-to-exceed amount of \$261,271 for the maximum contract term extending through December 31, 2018 (including both one-year extensions). DOU purchased 30 of 50 units from 3T Equipment Company for a total expenditure of \$101,717.29. The City will purchase the 20 remaining units from Hadronex for a cost of \$82,270.90. In addition to the units, the City will purchase extended warranties to cover all 50 units for a cost of \$111,847.59. The cost of the program for the maximum contract term extending through December 31, 2018, is \$194,118.49. There is sufficient funding in the DOU FY2014/15 Wastewater Collections (Department14001421) Operating Budget for purchases in the current fiscal year. Expenditures in successive fiscal years will be subject to funding availability in the adopted budget of the applicable fiscal year.

Local Business Enterprise (LBE): The City Council's authorization to purchase the Hadronex system occurred prior to establishment of the minimum LBE participation requirement for supply contracts.

Background

The DOU conducted a pilot program starting in May 2012 using ten Hadronex SmartCovers®. The goal of the pilot program was to provide detection of Sanitary Sewer Overflows (SSOs) early enough to deploy personnel to provide preventative action. The system has detected and, with field staff intervention, prevented several SSOs. In addition the system has detected unauthorized intrusions. Previous attempts with competing brands that promised an effective remote monitoring system for manholes had limited success due to a variety of reasons, including cost, installation logistics, battery life, communication, reliability, and size.

Research by Wastewater Collection staff found that in order for systems to be widely used, they need to be simple and fast to install; be low enough in cost to enable widespread deployment in more than just a few locations; avoid false alarms; minimize maintenance burdens; and provide reliable dependable information. During 2012 and 2013 while the Hadronex monitoring system was installed, Wastewater Supervisors invited many competing companies (Mission Communication, Telog, Target 1, and Utility System Science & Software) to present and demonstrate their monitoring systems for manholes. All of these companies made presentations and in some cases installed and demonstrated their devices for weeks. Additionally, Wastewater Supervisors took trips to other municipalities to seek advice, hear about evaluations and testing, and get recommendations of competitive monitoring systems for manholes.

No other system that was presented to or tested by Wastewater Collection staff performed as well and provided the level of protection that the Hadronex SmartCover® system. After reviewing the performance of the competing devices as well as the companies' presentations, City staff recommended the purchase of the Hadronex SmartCover®. These manhole covers were purchased through a contract with 3T Equipment Company, as the only authorized distributor for the Hadronex system in this area. City staff is requesting approval of a new contract to purchase the necessary equipment and support directly from Hadronex Inc., to replace the existing contract with 3T Equipment Company, because Hadronex has severed its business relationship with 3T Equipment Company.

Mr. Ken Schwartz
City of Sacramento
1395 35th Avenue
Sacramento, CA 95822

February 16, 2015

Dear Ken,

This letter is to inform you that our distributor, 3T, will no longer represent or support the SmartCover® products in northern California. In order to simplify your ongoing commitment to the SmartCover® monitoring and data acquisition system, we are proposing that you get all systems and services directly from Hadronex.

We understand that you have a contract in place with 3T and Hadronex is prepared to support it fully, as negotiated. Additionally, we understand that this will mean establishing a new contract with Hadronex. As an interim plan, until a new contract can be executed, we can allow 3T to remain as the supplier and support them in fulfillment of any contractual needs.

You may find some distinct advantages in doing business directly with Hadronex.

1. You will now be working with the manufacturer directly. We can respond more quickly and with greater depth of knowledge regarding technical issues.
2. We will coordinate all services to the city with a certified, trained technician that resides locally.
3. You will have only one supplier for both systems purchases as well as annual maintenance services.
4. We will provide with the best pricing by scrutinizing all available options.

For your edification, we are providing a sole source document on the second page of this letter.

We apologize to both you and the City for any added work that this change may cause. It is important to note that only the supplier is changing, not the product itself. As a result, you can look forward to a stable, consistent and responsive supplier with the added benefit of enjoying a direct-from-manufacturer relationship.

Respectfully Yours,



Jay Boyd
VP of Sales and Marketing

Sole Source Letter- Exclusive Manufacturer

This letter is to provide notification and direct evidence that Hadronex, Inc. herein known as “Company” with corporate offices located at 2067 Wineridge Pl Suite E, Escondido, Ca. 92029 the sole creator, manufacturer and marketer of systems and products, including the award winning *SmartCover*® and *SmartFLOE*™ systems.

The *SmartCover*® and *SmartFLOE*™ systems are **patented and proprietary** systems designed and manufactured by Company and provide users with unique qualities and functions to acquire water level data below the manhole cover or lift station lid, or other structures with open channel flows, using ultrasonic technology. The system acquires and transmits data through a satellite network and provides 24/7 user access via a secure web browser and through a dedicated, secure user website.

These systems uniquely provide real-time, continuous monitoring capability operated by an engineered and proprietary long-life, lithium thionyl chloride battery pack. It *uniquely* communicates by an embedded digital radio through the Iridium Satellite System assuring global, redundant coverage.

All systems provide user with the ability to acquire trend data via the with the *proprietary SmartTrend*™ analysis software tool that issues predictive “Advisories” on developing trends, “Alarms” for surcharges and intrusions, and maintenance “Alerts” that monitor specific operational parameters system. All notifications provide information and resources to users that improve user intelligence and enable effective, informed decision making for corrective action.

These systems are protected by the following US Patents 7,292,143, 7,948,215, 7,944,352, 7,598,858 and 7,589,630. The product is also protected by registered trademarks and international patents. Company also has a Madrid Treaty filing for its main trademark.

We hope this information will satisfy your requirements and that it clearly demonstrates the unique, patented and proprietary features of our systems.

PROJECT #:

PROJECT NAME: HADRONEX SMARTCOVER® REAL TIME CONTINUOUS MONITORING SYSTEM FOR MANHOLES

DEPARTMENT: UTILITIES

DIVISION: OPERATIONS AND MAINTENANCE

CITY OF SACRAMENTO
SUPPLIES AGREEMENT

THIS AGREEMENT is made at Sacramento, California, as of _____, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

Hadronex
2067 Wineridge Place, Suite E, Escondido, CA 92029
Phone: (760) 291-1980/Fax: (760) 291-1982

("CONTRACTOR"), who agree as follows:

1. **Contract.** The Contract shall consist of this Agreement and each of the following documents (if applicable), which are incorporated herein by reference:

Certificate(s) of Insurance
Technical Specifications
Declaration of Compliance - Equal Benefits Ordinance

2. **Supplies.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the supplies, and ancillary services (if any), described in Exhibit A. CONTRACTOR shall provide said supplies and services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for supplies/services provided outside the scope of Exhibit A unless prior to providing such supplies/services: (a) CONTRACTOR notifies CITY and CITY agrees that such supplies/services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional supplies/services; and (c) CITY, after notice, approves in writing a contract supplement specifying the additional supplies/services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any contract supplement, unless and until this Agreement or any contract supplement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.

3. **Payment.** CITY shall pay CONTRACTOR for supplies and ancillary services provided pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the supplies/services provided pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional supplies or ancillary services. CONTRACTOR shall submit all billings for said supplies/services to CITY in the manner specified in Exhibit B, or, if

not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.

4. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing supplies and ancillary services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
5. **General Provisions.** The Special Provisions set forth in Exhibit D, and the General Provisions set forth in Exhibit E, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.
6. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit F. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
7. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
8. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: John F. Shirey, City Manager

ATTEST:

City Clerk

APPROVED TO AS FORM:

City Attorney

CONTRACTOR:

Hadronex, Inc.
NAME OF FIRM

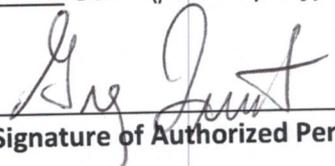
32-0249289
Federal I.D. No

101-182513
State I.D. No.

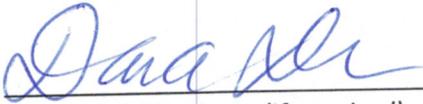
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (check one):

- Individual/Sole Proprietor
- Partnership
- Corporation (may require 2 signatures)
- Limited Liability Company
- Other (please specify: _____)


Signature of Authorized Person

Greg Quist, President
Print Name and Title


Additional Signature (if required)

DAVID A. DRAKE security
Print Name and Title

Attachments

- Exhibit A – Scope of Service
- Exhibit B – Fee Schedule/Manner of Payment
- Exhibit C – Facilities/Equipment Provided
- Exhibit D – Special Provisions
- Exhibit E – General Provisions
- Exhibit F – Non-Discrimination in Employee Benefits

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: Hadronex, Inc.

Address: 2067 Wineridge Place, Suite E, Escondido, CA 92029

The above-named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit F.
2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

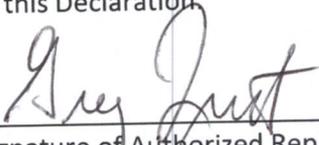
Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.

- b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Contract is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits, are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Contract is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.

6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Contract award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.



Signature of Authorized Representative

Date: 5/18/15

Print name: Greg Quist

Title: President

EXHIBIT A

SUPPLIES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Ken Swartz/Logistics Manager
Department of Utilities, 5730 24th Street, Bldg. #22, Sacramento, CA 95822
Phone: (916) 808-6276/Fax: (916) 421-4596/Email: kswartz@cityofsacramento.org*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Hadronex/Gregory Quist
2067 Wineridge Place, Suite E, Escondido, CA 92029
Phone: (760) 291-1980/Fax: (760) 291-1982/Email: gquist@hadronex.com*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. Scope of Services.

CONTRACTOR shall furnish SmartCover® Units with annual renewals and extended warranties as specified in Attachment 1 to Exhibit B, incorporated herein by this reference.

- A) 20 ea. SmartCover® Collection Monitoring Systems
- B) 20 ea. SmartCover® Active Site Management (1 year)
- C) Annual renewals and extended warranties to cover 50 units (30 already installed and 20 purchased under this Agreement) through December 31, 2018

All equipment provided by CONTRACTOR will meet or exceed the specifications in Attachment 1 to Exhibit A, incorporated herein by this reference.

3. Time of Performance. The initial term for this Agreement shall begin upon the date that the Agreement is authorized by the City Council and extend through December 31, 2016. CITY may extend the Agreement term for up to two additional one-year terms, for a maximum Agreement term, including both extensions, through December 31, 2018.

Attachment 1 to Exhibit A

Smartcover® Specifications:

SmartCover® Unit

Weight:	4.5 lbs.
Size:	1 ¾" x 6" x 6"
Power:	Provided with on-board SmartCover® PowerPack
Battery Life:	12 months
Environmental:	NEMA 6P
Mounting:	Magnetic or Mechanical
Antenna:	Conformal to mounting surface
Level sensor range:	3 inches to 86 inches with option to 20 feet
Level Resolution range:	1"
Intrusion Detection:	3-axis, continuous
Temperature Range:	-40°C to 80 °C

Communications:

Method:	2-way, wireless digital signal
Status Reporting:	Upon alarm, upon user request and at 1 hour intervals
Content:	<ul style="list-style-type: none">• Water level, Power Pack voltage, and Radio Signal Strength history• Operational Measurements• Alarms and Acknowledgements,• Site Characteristics• Maintenance and Locations Logs• Security: 128-bit, SSL, Username and Password Protection

EXHIBIT B

SUPPLIES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A (hereafter the "Services"), shall not exceed the total sum of \$ 194,118.49 .
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services in accordance with Attachment 1 to Exhibit B.
3. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job Name
 - (2) Description of services billed under this invoice
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract
 - C. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.
 - D. Requests for payment shall be sent to:

*Department of Utilities/Wastewater Collection
5730 24th Street, Bldg. #22, Sacramento, CA 95822
Phone: (916) 808-6275/Fax: (916) 421-4596
Attn: Jamie Brown*

- 4. Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a contract supplement authorizing such Additional Services is approved by CITY in accordance with CITY's approval procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.
- 5. Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
- 6. Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 6.

Attachment 1 to Exhibit B



SmartCover Systems is pleased to provide the following Proposal for the SmartCover® Systems™ level monitoring system and service with Pricing shown as follows:
 Note: (T) indicates a taxable item.

Pricing Summary

Part Number	Description	Unit Qty.	Unit Price (Each)	Extended
SC-Q-S-15	SmartCover® System Components E-Box System Control with onboard computer, modem, digital radio; fully potted and IP-68 rated. Distance Sensing Module (DSM) with 3" to 81" sensor range, with 15' cable. PowerPack® - lithium thionyl chloride battery with high power density. E-Square™ antenna , including antenna and installation kit. Mounting bracket kit - three-part amounting bracket set made of heavy gauge, hard-anodized aluminum; includes all mounting hardware.	20	\$3,427	\$68,540(T)
ASM-SC1	Active Site Management (ASM), One-Year: Comprehensive support services including: <ul style="list-style-type: none"> • Software subscription with <i>unlimited number of users</i> accessed with secure user name and password • Complete maintenance of all cloud based software • Regular feature updates and upgrades including the all new <i>SmartTrend™</i>. • Hosting of data storage – unlimited data storage • Iridium Satellite connectivity service with bi-directional communication. • Advisories, Maintenance Alerts and Alarms issued to customer defined personnel via email and/or text message • Ongoing technical support via phone or online. 	20	\$364	\$7,280
EW-SC1	Warranty. System hardware: EBox, DSM, antenna. ONE Year (Parts Only)	20	Included	Included
Shipping and Handling	Shipping and Handling done by SmartCover Systems	1	\$625	\$625
Taxes	City of Sacramento, 8.5%		\$5825.90	\$5825.90
TOTAL	Total Cost for 20 Smartcover Units			\$82270.90
	Renewal Costs including warranty by year on the next page.			

SmartCover® Systems™ 2067 Wineridge Place, Suite E, Escondido, CA, 92029
 760-291-1980 www.hadronex.com
 Hadronex, Inc. is now doing business as SmartCover® Systems™

	ANNUAL RENEWAL FROM 07/01/2016-12/31/2018			
	Renewal 07/01/2016-12/31/2016, Prorated Six Months			
ASM-SC1	Active Site Management (ASM), 20 of 30 units PRO-RATED to end on 12/31/2016 Comprehensive support services including: <ul style="list-style-type: none"> • Software subscription with <i>unlimited number of users</i> accessed with secure user name and password • Complete maintenance of all cloud based software • Regular feature updates and upgrades including the all new <i>SmartTrend™</i>. • Hosting of data storage – unlimited data storage • Iridium Satellite connectivity service with bi-directional communication. • Advisories, Maintenance Alerts and Alarms issued to customer defined personnel via email and/or text message Ongoing technical support via phone or online	20	\$182.00	\$3640
PW-LTC1	Power Pack Warranty, One Year (Parts Only) 20 of 30 units, Pro-rated to end on 12/31/2016	20	\$112.50	\$2250(T)
EW-SC1	Extended Warranty. System hardware: EBox, DSM, antenna. SIX MONTHS (Parts Only)20 of 30 units pro-rated to end on 12/31/2016	20	\$199.50	\$3990
	Total Renewal for 20 units, 2016 (Pro-rated six months only)			\$9,880.00
	Annual Renewal from 12/8/2015-12/31/2016 Pro-rated 13 Months, for 10 of the 30 units			
ASM-SC1	Active Site Management (ASM), One-Year Dates: 12/08/2015-12/31/2016 Comprehensive support services including: <ul style="list-style-type: none"> • Software subscription with <i>unlimited number of users</i> accessed with secure user name and password • Complete maintenance of all cloud based software • Regular feature updates and upgrades including the all new <i>SmartTrend™</i>. • Hosting of data storage – unlimited data storage • Iridium Satellite connectivity service with bi-directional communication. • Advisories, Maintenance Alerts and Alarms issued to customer defined personnel via email and/or text message Ongoing technical support via phone or online	10	\$394.29	\$3942.90
PW-LTC1	Power Pack Warranty, 13 Months (Parts Only) 12/8/15-12/31/16	10	\$243.75	\$2437.50(T)
EW-SC1	Extended Warranty. System hardware: EBox, DSM, antenna. 13 Months (Parts Only)12/08/15-12/31/16	10	\$432.25	\$4322.50
	Total Renewal for 10 units, 2016 (Pro-rated 13 months)			\$10,702.90

	Annual Renewal (2017), plus 10 purchased/installed in 2016			
ASM-SC1	Active Site Management (ASM), One-Year: Annual renewal 01/01/2017-12/31/2017 Comprehensive support services including: <ul style="list-style-type: none"> • Software subscription with <i>unlimited number of users</i> accessed with secure user name and password • Complete maintenance of all cloud based software • Regular feature updates and upgrades including the all new <i>SmartTrend™</i>. • Hosting of data storage – unlimited data storage • Iridium Satellite connectivity service with bi-directional communication. • Advisories, Maintenance Alerts and Alarms issued to customer defined personnel via email and/or text message Ongoing technical support via phone or online	40	\$364	\$14560
PW-LTC1	PowerPack Warranty- One year (Parts Only) 01/01/2017-12/31/2017	40	\$225	\$9000(T)
EW-SC1	Extended Warranty. System hardware: EBox, DSM, antenna. Year (Parts Only) 01/01/2017-12/31/2017	40	\$399	\$15960
	Total Renewal 2017			\$39,520
	Annual Renewal 2018, Completes purchase of last 10 units and includes discount			
ASM-SC1	Active Site Management (ASM), Two Year: Annual renewal 01/01/2018-12/31/2018 Comprehensive support services including: <ul style="list-style-type: none"> • Software subscription with <i>unlimited number of users</i> accessed with secure user name and password • Complete maintenance of all cloud based software • Regular feature updates and upgrades including the all new <i>SmartTrend™</i>. • Hosting of data storage – unlimited data storage • Iridium Satellite connectivity service with bi-directional communication. • Advisories, Maintenance Alerts and Alarms issued to customer defined personnel via email and/or text message Ongoing technical support via phone or online	50	\$364	\$18200
PW-LTC1	Power Pack Warranty, One Year (Parts Only) 1/1/18-12/31/18	50	\$225	\$11250(T)
EW-SC1	Extended Warranty. System hardware: EBox, DSM, antenna. One Year (Parts Only) 1/1/18-12/31/18	50	\$399	\$19950
	Total Renewal 2018			\$49400
Shipping and Handling	Shipping and Handling done by SmartCover Systems, Parts shipment			\$225
Taxes	City of Sacramento, 8.5% (renewal portion)			\$2119.69
Subtotal	Total Smartcover Systems			\$82,270.90
Subtotal	Total Renewal			\$111847.59
Grand Total	Total of Smartcover system and renewal			\$194,118.49

SmartCover® Systems™ 2067 Wineridge Place, Suite E, Escondido, CA, 92029
 760-291-1980 www.hadronex.com
 Hadronex, Inc. is now doing business as SmartCover® Systems™

EXHIBIT C

SUPPLIES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

 X Not furnish any facilities or equipment for this Agreement; or

 furnish the following facilities or equipment for the Agreement [*list, if applicable*]:

EXHIBIT D

SUPPLIES AGREEMENT

SPECIAL PROVISIONS

Guarantee

- a. The manufacturer and/or dealer delivering the SmartCover® Collection Monitoring System equipment, parts, installation, activation and network access against these specifications shall guarantee that they meet the minimum requirements set forth herein. If it is found that the equipment delivered does not meet the minimum requirements of this specification, the manufacturer and/or dealer will be required to correct the same at its expense. Failure of the manufacturer and/or dealer to bring the equipment into full compliance with all the requirements set forth in this specification within their 30 days of delivery shall constitute cause for rejection of the equipment. In case the equipment is rejected, it shall be removed promptly from the City's premises at the manufacturer's and/or dealer's expense. The manufacturer and/or dealer delivering the SmartCover® Collection Monitoring System equipment, parts, installation, activation and network access will use only the manufacturer and the brand/models specified.
- b. In case of default by supplier, the City reserves the right to procure the articles or services from other sources and to hold the supplier responsible for any excess costs occasioned to the City thereby.

F.O.B.

All items are to be supplied F.O.B., City of Sacramento, California, full freight prepaid and allowed. Contractor will bear and pay freight charges at time of shipment and hold title to goods up until they are received by the City of Sacramento at the shipping destination. Contractor will be responsible for filing all claims for damaged or lost goods.

Payment Terms

Payment terms are net 30 days unless Contractor offers a prompt payment discount. All prompt payment discounts if taken shall be computed from the date of delivery or completion and acceptance of material, or from date of receipt of invoice, whichever is latest. Invoices must be submitted as specified at the time of shipping authorization. Partial payments may be made by the City on delivery and acceptance of goods and on receipt of Contractor's invoice.

Most favored customer pricing

Hadronex represents and warrants to the City of Sacramento that the equipment, parts, activation and network access offered to the City of Sacramento under this Agreement are no less favorable than the equipment, parts and software offered to any other party purchasing similar quantities. In the event Hadronex offers more favorable equipment, parts and software to any other party, Hadronex will promptly notify the City of Sacramento of such event and offer such more favorable equipment, parts, activation and network access to the City of Sacramento commencing upon the date such more favorable equipment, parts, activation and network access were offered to the other party. The City reserves the right to terminate the contract without further obligation by either party in the event

price increases are not acceptable. In the event of a price decline, the benefit of such lower prices shall be immediately extended to the City.

Quantities

The quantity specified in the pricing schedule are estimates only and based upon current known requirements and is subject to increase or decrease at the same terms and conditions.

Cooperative Purchasing

The use of any resulting contract may be extended to other government agencies. It shall be understood that all terms and conditions as specified herein shall apply. The City of Sacramento will not be an agent, partner or representative of any other government agency as it relates to this specification; and is not obligated or liable, including, but not limited to, payment for an order placed by any other government agency.

EXHIBIT E

SUPPLIES AGREEMENT

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive

relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

- 2. Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
- 3. Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
- 4. CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
- 5. Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
- 6. Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any

City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term “information” shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party’s trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY’s failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR’s proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked “trade secret” when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff’s attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual “trade secret” designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by

CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. Standard of Performance. CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services render by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of failure to perform this Agreement by CONTRACTOR, its employees, any subcontractor or agent, or anyone for whose acts any of them may be liable; provided that the foregoing indemnity does not apply to liability for any damage, costs, liabilities, claims, demands, losses, judgments, penalties or expenses arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, to the extent arising from the negligence or willful misconduct of CITY, its officers, agents, servants, or independent contractors, except when such agents, servants, or independent contractors are under the direct and exclusive supervision and control of CONTRACTOR.

- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the CITY.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

- A. Minimum Scope & Limits of Insurance Coverage
 - (1) Commercial General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors, products and completed operations of CONTRACTOR, its sub-

consultants, and subcontractors, and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than one million dollars (\$1,000,000) per accident. The policy shall provide coverage for owned, non-owned, and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." gr (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Workers' Compensation policy shall include a waiver of subrogation in favor of the CITY. If no work or services will be performed on or at CITY facilities or CITY Property, the CITY Representative may waive this requirement by selecting the option below:

Workers' Compensation waiver of subrogation in favor of the CITY is not required. _____ (CITY Representative initials)

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." gr (CONTRACTOR initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors; products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors; and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors.
- (2) Automobile Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) CONTRACTOR's insurance coverage, including excess insurance, shall be primary insurance as respects CITY, its officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees, or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

City of Sacramento
c/o Ebix RCS

Reference #: (This number will be provided by EBIX after Agreement approval.)
PO Box 257
Portland, MI 48875-0257

Insurance certificates also may be faxed to (770) 325-3340, or e-mailed to:
CertsOnly-Portland@ebix.com

- (3) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. Equal Employment Opportunity. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Contract or

Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization (“SBE”) in accordance with the applicable SBE criteria and requirements.

- B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
- C. The above provisions shall apply in all instances unless prohibited by the funding source for the Contract or Agreement.

EXHIBIT F

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$100,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of

espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm, partnership, corporation, company, or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR’S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee’s name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “B.”

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO’S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the “Employer”) entered into a contract with the City of Sacramento (the “City”) for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City’s Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.