

Meeting Date: 5/10/2016

Report Type: Consent

Report ID: 2016-00427

Title: Agreement: Gas Detection Equipment Lease with Remote Monitoring Service (Two-Thirds Vote Required)

Location: Citywide

Recommendation: Pass a Resolution 1) rejecting all bids received for Bid No. B16141451027, Gas Detection Equipment Lease with Remote Monitoring System; 2) suspending competitive bidding in the best interests of the City, for the lease of Gas Detection Equipment and Remote Monitoring System; and 3) authorizing the City Manager or the City Manager's designee to execute a) an agreement for the lease of Gas Detection Equipment with Remote Monitoring System with Industrial Scientific Corporation, for an initial term of one-year with three one-year renewal options, for a total amount not to exceed \$301,408 over the maximum four year term; and b) the one-year term renewals, subject to the availability of funding in the approved budget for the applicable fiscal year(s).

Contact: Michael Malone, Operations Manager, (916) 808-6226; Ken Swartz, Program Specialist, (916) 808-6276, Department of Utilities; Emmett Bradshaw, Environmental Health & Safety Specialist, (916) 808-5452, Department of Human Resources

Presenter: None

Department: Department Of Utilities

Division:

Dept ID:

Attachments:

1-Description/Analysis

2-Resolution

3-Agreement

City Attorney Review

Approved as to Form

Joe Robinson

5/2/2016 11:43:08 AM

Approvals/Acknowledgements

Department Director or Designee: Bill Busath - 4/22/2016 11:30:42 AM

Description/Analysis

Issue: The Department of Utilities (DOU), Operations and Maintenance Division, utilizes gas detection equipment to ensure the safety of personnel during confined space entry. This equipment and related services are vital to ensure the safety of DOU personnel and to comply with applicable health and safety requirements per Cal/OSHA and the City's Injury and Illness Prevention Program Confined Space Operations procedure.

Policy Considerations: DOU staff advertised Bid No. B16141451027 for a Gas Detection Equipment Lease with Remote Monitoring System and received only one bid. The bidder, Industrial Scientific Corporation is considered non-responsive as they do not meet the minimum LBE participation requirement included in the bid invitation. DOU staff is recommending that the City Council adopt a resolution to reject the bid, and then suspend competitive bidding so an equipment lease agreement with Industrial Scientific for its bid amount can be approved. City Code Section 3.56.230(c) authorizes the City Council to suspend competitive bidding for the purchase of equipment when, upon a two-thirds vote, the City Council determines it is in the best interests of the City. Staff believes that suspending competitive bidding to allow approval of the lease agreement with Industrial Scientific is in the City's best interests, because: (1) Industrial Scientific is the only firm that responded to the City's request for bids, and its bid is responsive to all bid requirements except the minimum LBE participation provision; (2) rejecting its bid and rebidding without the minimum LBE participation requirement is unlikely to result in bids from any other bidders; and (3) DOU has used Industrial Scientific equipment and services in the past and its performance has been very good.

Economic Impacts: None.

Environmental Considerations: The Community Development Department, Environmental Planning Services has determined that the project is exempt from environmental review under the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3). 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.

Sustainability: The procurement of gas detection equipment is consistent with the goals and targets of the City's Sustainability Master Plan, by allowing City staff to enter and maintain the City's sewer and drainage collection systems thereby reducing sanitary sewer overflows.

Commission/Committee Action: Not Applicable

Rationale for Recommendation: DOU has an ongoing need for gas detection equipment to ensure the safety of our personnel during confined space entry to detect carbon monoxide and potential chlorine leaks.

Financial Considerations: The proposed contract with Industrial Scientific is for an initial term of one-year with three one-year renewal options for a total not-to-exceed amount of \$301,408 over the maximum four year term. Sufficient funding exists in the Department of Utilities FY2015/16 operating budget for the purchases through June 30, 2016. Purchases made after July 1, 2016 are subject to funding availability in the adopted budget for the applicable fiscal year(s).

<u>Year</u>	<u>Amount</u>
Initial Term:	
FY 2015/16 (05/27/2016 – 06/26/2016)	\$6,279
FY 2016/17 (06/27/2016 – 06/26/2017)	\$75,352
Option Year 1: (06/27/2017 – 06/26/2018)	\$75,352
Option Year 2: (06/27/2018 – 06/26/2019)	\$75,352
Option Year 3: (06/27/2019 – 05/26/2020)	\$69,073
Total	\$301,408

Local Business Enterprise (LBE): Industrial Scientific is not an LBE. The minimum LBE participation requirement is waived as the City is suspending competitive bidding and utilizing an alternate procurement method to select a vendor.

RESOLUTION NO.

Adopted by the Sacramento City Council

REJECTING ALL BIDS, SUSPENDING COMPETITIVE BIDDING, AND APPROVING AN EQUIPMENT LEASE FOR GAS DETECTION EQUIPMENT AND MONITORING SERVICE

BACKGROUND

- A. The Department of Utilities (DOU) utilizes gas detection equipment to ensure the safety of personnel during confined space entry. This equipment and related services are vital to ensure the safety of DOU personnel and to comply with applicable health and safety requirements.
- B. City staff advertised Bid No. B16141451027 for Gas Detection Equipment Lease with Remote Monitoring Service and received only one bid. The bidder, Industrial Scientific Corporation, did not meet the minimum LBE participation requirement included in the bid specifications, so its bid is considered non-responsive. City staff recommends that the City Council reject the bid, and then suspend competitive bidding so the contract with Industrial Scientific Corporation, for its bid amount, can be approved.
- C. City Code Section 3.56.230(c) authorizes the City Council to suspend competitive bidding for the purchase of supplies when, upon a two-thirds vote, the City Council determines it is in the best interests of the City. It is in the City's best interests to suspend competitive bidding for this equipment lease agreement because: (1) Industrial Scientific is the only firm that responded to the City's request for bids, and its bid is responsive to all bid requirements except the minimum LBE participation provision; (2) rejecting its bid and rebidding without the minimum LBE participation requirement is unlikely to result in bids from any other bidders; and (3) DOU has used Industrial Scientific equipment and services in the past and its performance has been very good.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. All bids received for Bid No. B16141451027, Gas Detection Equipment Lease with Remote Monitoring System, are rejected.
- Section 2. In the best interests of the City, competitive bidding is suspended for the lease of Gas Detection Equipment with Remote Monitoring System.
- Section 3. The City Manager or the City Manager's designee is authorized to execute:
 - (a) An agreement for the lease of Gas Detection Equipment with Remote Monitoring System with Industrial Scientific Corporation, for an initial term of one-year with three one-year renewal options, for a total

amount not to exceed \$301,408 over the maximum four year term; and

(b) The one-year term renewals, subject to the availability of funding in the approved budget for the applicable fiscal year(s).

iNet® USAGE AGREEMENT
Exchange Program
With iNet DSXi

This iNet Usage Agreement (the "Agreement") is made on May 27, 2016, between INDUSTRIAL SCIENTIFIC CORPORATION, a Pennsylvania corporation ("Company"), and CITY OF SACRAMENTO, CALIFORNIA (the "Customer" and, along with Company, the "Parties," provided the Parties may be individually referred to as a "Party").

PREAMBLE

Company manufactures, distributes, provides and services gas detection equipment used in a variety of applications. Company has developed iNet, a program through which Company (a) helps its customer select gas detection equipment appropriate for the customer's needs; (b) provides, calibrates and services the detection equipment selected by a customer; and (c) enables the customer to transmit detection readings to Company over the Internet and, thereby, frees that customer from burdensome recordkeeping.

Customer wishes to subscribe for the iNet services and to use the gas detection and related equipment described on Schedule B to this Agreement (the "Equipment"), all on the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises and with the intent to be legally bound, the Parties hereto agree as follows:

AGREEMENT

1. Subscription. Customer hereby subscribes for the iNet service (the "Subscription") for a period of twelve (12) months. The Subscription shall begin after Customer provides Company with (a) a purchase order; (b) a completed Schedule A; (c) a completed and fully-executed Pre-Installation Acceptance Form ("PIAF") on the attached Schedule C; and (d) this Agreement as fully-executed by Customer and Company (the "Required Documents"). Based upon the receipt of the Required Documents, the Subscription will commence May 27, 2016, and terminate on May 26, 2017 (the "Term"). Thereafter, this Agreement shall automatically renew on an annual basis, (the "Renewal Term,") unless one of the Parties provides the other Party with written notice at least sixty (60) days prior to the expiration of the Initial Term that it does not intend to renew the Agreement. If the Agreement renews, during the Renewal Term either Party may terminate this Agreement by providing thirty (30) days' prior written notice to the other Party of its intention to terminate this Agreement. The Initial Term and the Renewal Term are collectively referred to as the "Term."

2. Subscription Fee and Costs. The total cost of the Subscription for the Initial Term is US \$73,352.68 (the "Subscription Fee"), billed to Customer as follows: twelve (12) invoices for equal installment payments in the amount of US \$6,279.39. Customer shall pay all invoices in accordance with Section 2(c) below. Unless otherwise agreed upon in writing by the Parties, the Subscription Fee for each month of the Renewal Term shall be equal to the monthly installment of the Subscription Fee invoiced for the last month of the Initial Term.

(a) Charges. In addition to the Subscription Fee, any and all charges for Customer's Internet connection and calibration gas will be paid by Customer.

(b) Expenses. Customer shall reimburse Company for any travel expenses incurred by Company in the course of performing its duties hereunder; such expenses could include, but are not limited to, expenses for food, lodging, rental car, mileage and airfare, provided that Customer approves any such reimbursable expenses in advance. Travel expenses associated with the initial installation are included in the Subscription Fee.

(c) Payment Terms. Customer will pay to Company the Subscription Fee, reimbursable expenses and any other fees and charges hereunder ("Fees"). Subscription Fees do not include taxes that may

apply. Customer is responsible for all applicable sales, use, and any other taxes, duties and charges imposed by any government body or agency with respect to the Equipment and Subscription (except taxes based upon Company's income). Payment of the Fees is due within thirty (30) days from the date of the invoice ("Net 30"). All invoices will be delivered by one of the following methods as selected by Customer: US postal service first class mail, electronic data interchange (EDI), or email. If Customer provides any other special invoicing requirements, Company shall charge increased Fees to accommodate Customer's special invoicing requirements. Company will notify Customer of the amount of increased Fees that will be charged to accommodate special invoicing requirements.

(d) Purchase Orders. In the event of a conflict between terms and conditions of a Purchase Order issued hereunder and this Agreement, the provisions of this Agreement shall control. No legal terms and conditions on a Purchase Order will be binding upon Company without Company's written agreement.

3. Installation and Use.

(a) Installation. The Equipment will be installed only at the location(s) specified in Schedule A and shall not be transferred or removed from such location(s) without Company's prior written permission. Company reserves the right to schedule the installation at a mutually agreed upon time and date.

(b) Protection From Direct/Indirect Affected Network Components. Company is not responsible for network systems affected directly or indirectly by installation of iNet components.

(c) Security Changes. Customer is responsible for changes made in network and system security, training new network users; and any other network related administration duties relating to this installation.

Company is not responsible for the security of the networked computing system that has been connected to the Internet.

(d) Customer Network Requirement. Customer will provide cabling and/or wireless networking components and cabling installation labor for all necessary network connections.

4. Customer's Responsibilities. In addition to its other obligations set forth herein, Customer shall:

(a) use the Equipment only in accordance with the documentation and other instructions provided by Company;

(b) dock the gas detection Equipment onto the iNet DS Docking Station (or any other similar docking station provided by Company) at least once each day. Company has no obligation to record, analyze, or take any action with respect to, any information recorded by the gas detection Equipment until such time as Customer has properly docked the Equipment to the docking station;

(c) when Company delivers to Customer replacement Equipment for failed Equipment pursuant to Company's obligations set forth in Section 5 below, Customer acknowledges that it shall be obligated to promptly return the failed Equipment so replaced to Company in prepaid shipping packages provided by Company packed in a commercially reasonable manner pursuant to Company instructions. In addition, if Customer does not return such replaced failed Equipment to Company within seven (7) days after receipt of the replacement Equipment and prepaid shipping materials, Customer shall purchase such Equipment from Company for an amount equal to the current retail price charged by Company for the Equipment;

(d) provide Company with ready access to any Equipment or other materials delivered hereunder for Company to fulfill its obligations hereunder;

(e) only permit its employees, and no other parties, to use the Equipment;

(f) replace any lost, stolen or otherwise missing Equipment (including Equipment lost due to fire, theft, vandalism and the like) and replace any Equipment that is destroyed or damaged beyond repair at an agreed upon pricing schedule at time of replacement;

(g) refrain from creating or attempting to create, or permitting others to create or attempt to create, by reverse engineering or otherwise, any Equipment made available under this Agreement; and

(h) return, at Customer's expense, any Equipment delivered hereunder to Company at the end of the Term in the same condition in which it was received, normal wear and tear excepted.

5. Company Responsibilities. In addition to its other obligations set forth herein, Company shall:

(a) deliver to Customer for the Term the Equipment;

(b) promptly repair or replace, as described on Schedule D, any delivered Equipment that malfunctions or otherwise fails for any reason other than misuse (or negligent use) by Customer;

(c) provide the type and level of service described on Schedule D;

(d) provide field service technicians to perform initial installation services having the credentials, training and screening stated on Schedule E and, if Customer will require that Company's technicians have additional credentials, training, and/or screening beyond that identified on Schedule E, Customer agrees to pay all associated costs and expenses incurred by Company related to obtaining the additional credentials, training, and/or screening required by Customer, provided that Company notifies Customer of these costs and expenses after learning of Customer's additional requirements and, after receiving such notification, Customer confirms in writing its continued requirements for such additional credentials, training, and/or screening.

6. Termination.

(a) Termination by Company. Company may terminate this Agreement prior to its expiration upon thirty (30) days' prior written notice to Customer upon the occurrence of any of the following events: (i) Customer becomes insolvent, or institutes (or there is instituted against it) proceedings in bankruptcy, insolvency, reorganization or dissolution, makes an assignment for the benefit of creditors or becomes nationalized or has any of its material assets confiscated or expropriated; (ii) except as permitted by Section 13(e), Customer attempts to sell, assign, delegate or transfer any of its rights and obligations under this Agreement or Customer is dissolved, substantially changes its line of business, sells substantially all of its assets, or suffers a change in ownership; and/or (iii) Customer commits a material breach of this Agreement and fails to remedy it within a reasonable period of time.

(b) Termination by Customer. Customer may terminate this Agreement prior to its expiration upon thirty (30) days' prior written notice to Company if Customer commits a material breach of this Agreement and fails to remedy it within a reasonable period of time.

7. Rights of Parties on Termination.

(a) Obligations After Termination. In the event that this Agreement is terminated or expires on its own terms, Company shall have no further responsibilities to Customer.

(b) Return of Materials. Within thirty (30) days after expiration or termination of this Agreement for any reason, Customer shall deliver to Company, at Customer's expense, all Equipment, documentation and any other material supplied to Customer by Company.

(c) Survival. Notwithstanding anything to the contrary set forth herein, no termination of this Agreement shall relieve any Party from any obligations pursuant to Sections 4(h), 7(b), 8, 9, 10, 11, or 13, or any other obligations hereunder which are outstanding on, or relate to matters or claims occurring or arising prior to, the date of such termination or which survive such termination by their own terms.

8. Limited Warranty. The Equipment delivered hereunder is warranted for the shorter of (a) the Term of the Agreement; or (b) until Company replaces the Equipment. The Equipment is warranted to conform to Company's standard specifications as set forth in documentation provided to Customer prior to the date of this Agreement. Company does not warrant that the Equipment will meet Customer's requirements, or that the Equipment will be error free. Company's sole obligation under the warranty shall be limited to correction of Equipment defects.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITED WARRANTY SET FORTH IN THIS SECTION 8 AND THE OBLIGATIONS AND LIABILITIES HEREUNDER ARE IN LIEU OF, AND CUSTOMER HEREBY WAIVES, ALL IMPLIED GUARANTEES AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IT IS IN LIEU OF ANY LIABILITY OF COMPANY UNDER ANY PROVISIONS OF THIS AGREEMENT AND ANY PROVISIONS OF ANY APPLICABLE LAW.

9. Protection of Interest. Customer acknowledges and agrees that title to any Equipment or other material delivered hereunder remains vested in Company at all times. Customer hereby authorizes Company at any time, and from time to time, to execute and/or file, in accordance with the laws of any jurisdiction, with or without the signature of Customer, all Uniform Commercial Code financing or continuation statements or other documents which Company may deem necessary or desirable to protect its ownership interest in any Equipment or other material delivered hereunder. Customer authorizes Company to execute any such documentation on behalf of Customer as Customer's attorney-in-fact. Customer acknowledges that the Equipment is provided as a true lease.

10. Indemnification, Limitation of Liability and Remedy.

(a) Indemnification. Each of Company and Customer (individually, an "Indemnifying Party") shall indemnify, hold harmless and defend the other and the other's respective officers, directors, agents, representatives, employees, and affiliates (the "Indemnified Parties"), at the Indemnifying Party's expense, from and against any and all claims, demands, actions, costs, expenses, liabilities, judgments, causes of action, proceedings, suits, losses and damages of any nature, which are threatened or brought against, or are suffered or incurred by, the other or any of the other's Indemnified Parties resulting from any of the Indemnifying Party's acts or omissions relating to this Agreement, including without limitation (i) any negligent or tortious conduct; (ii) failure or any breach of any of their respective representations, warranties, covenants, agreements or conditions contained in this Agreement; and (iii) any violations of applicable laws or regulations. Customer will indemnify Company and its Indemnified Parties against any misrepresentations by Customer's officers, employees, or agents, including the extension of any warranties on products or services not specifically authorized by Company in writing.

(b) Limitation of Liability. Company shall not be liable to Customer, or to any customer, employee, representative, officer, director, agent or affiliate of Customer, for any SPECIAL, INDIRECT, CONTINGENT, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITIES, OR FOR LOSSES OR DAMAGES CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT AND/OR SERVICES DELIVERED HEREUNDER OR

THE FAILURE TO DELIVER PRODUCTS OR SERVICES hereunder. This subsection (b) shall not apply to tort liability for death, personal injury or property damage arising from any negligent act or omission or willful misconduct at the installation locations by Company, its officials, employees, agents or subcontractors.

(c) Limitation of Remedy. If Company should be held liable for damages to Customer for any cause arising out of or related to this Agreement, or its breach, such damages, in the aggregate, shall not exceed the lesser of (i) the Subscription Fee actually paid hereunder; or (ii) actual damages incurred. Customer expressly waives its right to collect any greater amount. This subsection (c) shall not apply to tort liability for death, personal injury or property damage arising from any negligent act or omission or willful misconduct at the installation locations by Company, its officials, employees, agents or subcontractors.

(d) Use of Equipment. COMPANY AND ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES AND AFFILIATES SHALL NOT BE LIABLE FOR DAMAGES OR INJURIES OF ANY KIND OR NATURE INCURRED OR SUFFERED BY CUSTOMER OR ANY OF ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES AND/OR AFFILIATES ("CUSTOMER PARTIES") THAT RELATE IN ANY WAY TO OR ARISE FROM COMPANY'S PROVISION OF WRITTEN REPORTS, OR FAILURE TO PROVIDE SUCH REPORTS, OR DELAY IN PROVIDING SUCH REPORTS TO CUSTOMER OR ANY OF THE CUSTOMER PARTIES, CONCERNING ANY DATA OR ANY ANALYSIS BASED ON ANY DATA COLLECTED BY THE EQUIPMENT PROVIDED HEREUNDER.

11. Disclosure and Confidentiality.

(a) Company Information. Customer agrees that any technical or business information, including, but not limited to, the terms of this Agreement and its pricing terms, that is disclosed to Customer in connection with the performance of services under this Agreement ("Company Confidential Information") either orally or in writing, is to be treated as confidential and proprietary, except as provided in this subsection (a). Customer agrees that Company Confidential Information will be maintained in strict confidence and not used for any purpose unrelated to this Agreement nor disclosed to any third parties. The requirement to maintain information in strict confidence, however, shall not apply to Company Confidential Information that: (i) is or becomes generally available to the public through no wrongful act of Customer; (ii) was in the possession of Customer prior to the time it was acquired hereunder and was not acquired, directly or indirectly, from Company or its affiliates or from others under an obligation of confidentiality; (iii) is independently made available as a matter of right to Customer by a third party without obligations of confidentiality, provided that such third party did not acquire such information directly or indirectly from Company or its affiliates; or (iv) is required by law to be divulged, provided that Customer must notify Company prior to any disclosure, and must assist Company in minimizing the extent of disclosure.

Customer agrees to limit access to Company Confidential Information to its employees, agents, and representatives who reasonably require such access for purposes of this Agreement. Customer agrees to use its best efforts in requiring that its employees, agents, and representatives maintain Company Confidential Information in strict confidence. Customer must not make, nor permit the making of, any copies, abstracts, derivatives, or summaries of any Company Confidential Information without Company's prior written consent. Upon termination of this Agreement and the completion of all work hereunder, or at Company's request, Customer must return all Company Confidential Information, including, but not limited to, all copies, abstracts, derivatives, and summaries.

Notwithstanding any other provision of this subsection (a), if Customer receives a request for disclosure of any Company Confidential Information, pursuant to the California Public Records Act, the Customer shall give notice to Company of any request for the disclosure of such information. The Company shall then have five (5) days from the date it

receives such notice to enter into an agreement with the Customer, satisfactory to the Sacramento City Attorney, providing for the defense of, and complete indemnification and reimbursement for, all costs (including plaintiff's attorney fees) incurred by Customer in any legal action to compel the disclosure of such information under the California Public Records Act. The Company shall have sole responsibility for defense of the actual "proprietary" or "trade secret" designation of such information. The parties understand and agree that any failure by the Company to respond to the notice provided by Customer and/or to enter into such agreement with Customer shall constitute a complete waiver by Company of the protection afforded such Company Confidential Information under this subsection (a), and such information shall be disclosed by Customer pursuant to applicable procedures required by the Public Records Act.

(b) Customer Information. Company agrees not to share or disclose any information collected from Customer to any outside third party. Notwithstanding the foregoing, Company may collect, use and/or disclose information collected from Customer to any outside third party for iNet related research and development purposes provided that such information is de-identified by collection on an anonymous basis aggregated with similar information collected from other customers of Company for research and development purposes. Furthermore, Company may disclose Customer information if required to do so by law or in the good-faith belief that such action is necessary to: (i) conform to legal requirements or comply with legal process served on Company; (ii) protect and defend the rights or property of Company, iNet, or iNet participating sites; or (iii) act under exigent circumstances to protect the personal safety of users of the iNet service, or the public.

12. Use of Customer's Name and Testimonials. Customer agrees to permit Company to:

(a) publish Customer's name on lists identifying customers of Company's iNet gas detection services without any additional approval from Customer;

(b) publish information regarding Customer's usage of Company's products and iNet services and benefits realized by Customer for marketing purposes but only with Customer's prior written approval of the content of such marketing material pertaining to Customer; and

(c) issue a press release containing Customer's testimonials, as well as information regarding Customer's usage of Company's products and iNet services and benefits realized, but only with Customer's prior written approval of the content of such press release.

13. General Provisions.

(a) Amendments. This Agreement may be amended only by a writing signed by each of the Parties, and any such amendment shall be effective only to the extent specifically set forth in such writing.

(b) Governing Law. This Agreement shall be a contract under the laws of the State of California and for all purposes shall be governed by and construed and enforced in accordance with the substantive laws of said state without regard to its principles of conflicts of laws and the U.N. Convention on Contracts for the International Sale of Goods.

(c) Mediation. The Parties agree that they shall submit any dispute related to or arising out of this Agreement to non-binding mediation at a location in the County of Sacramento to be mutually agreed upon by the Parties. Each Party shall bear its own costs incurred in connection with the mediation; the mediator's costs and fees shall be borne equally by the Parties.

(d) [Reserved]

(e) Assignment. Customer shall not assign, pledge, sublet or otherwise transfer any of its rights, interest or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Company which consent may be granted or withheld in Company's sole and absolute discretion. For purposes of this Agreement, an assignment shall include a sale of substantially all of Customer's assets or a merger or consolidation of Customer with one or more other entities in which Customer is not the surviving entity or the shareholders of Customer own less than a majority of the voting securities of the entity that survives the merger or consolidation.

(f) Force Majeure.

(i) No Party is liable for any failure to perform its obligations under this Agreement (other than accrued obligations to make payments of money) if such performance has been delayed, interfered with or prevented by an event of Force Majeure.

(ii) As used in this Section, "Force Majeure" means any circumstances whatsoever which are not within the reasonable control of the Party affected thereby, including without limitation an act of God, war, insurrection, riot, strike or labor dispute, shortage of materials, fire, explosion, flood, government requisition or allocation, breakdown of or damage to plant, equipment or facilities, interruption or delay in transportation, fuel supplies or electrical power, Internet connection, server or related equipment failure, embargo, boycott, order or act of civil or military authority, legislation, regulation or administrative rules (including without limitation any Executive Order issued by the President of the United States), or any inability to obtain or maintain any governmental permit or approval. The Party who declares Force Majeure will give prompt notice to the other Party of such declaration.

(iii) If the performance of any obligation has been delayed, interfered with or prevented by an event of Force Majeure, then the Party affected by such event will take such actions as are reasonably available to remove the event of Force Majeure or to mitigate the effect of such occurrence.

(iv) If an event of Force Majeure occurs, the obligations of the Parties under this Agreement (other than accrued obligations to make payments of money) will be suspended during, but not longer than, the continuance of the event of Force Majeure. If such event (alone or extended by another event of Force Majeure) continues so that the obligations of the Parties remain suspended for a period of twenty (20) continuous days and, at the end of such period or at any time thereafter during which such suspension continues uninterrupted, any Party, in the exercise of reasonable judgment, concludes that there is no likelihood that the event of Force Majeure will be removed in the immediate future, then any Party may terminate this Agreement without liability to any other Party (other than on account of accrued obligations to make payments of money) by giving to the other five (5) days' written notice of its intention to terminate.

(g) Counterparts. This Agreement may be executed in any number of counterparts, and by each of the Parties on separate

counterparts, each of which, when so executed, shall be deemed an original, but all of which shall constitute but one and the same instrument. Counterparts of this Agreement (or applicable signature pages hereof) that are manually signed and delivered by facsimile transmission or PDF files shall be deemed to constitute signed original counterparts hereof and shall bind the Parties signing and delivering in such manner.

(h) Cumulative Remedies. The rights and remedies of the Parties hereunder are cumulative and not exclusive of any rights or remedies which the Parties would otherwise have. No single or partial exercise of any such right or remedy by a Party, and no discontinuance of steps to enforce any such right or remedy, shall preclude any further exercise thereof or of any other right or remedy of such Party.

(i) Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the transactions contemplated hereby and supersedes all prior written and oral agreements, and all contemporaneous oral agreements, relating to such transactions.

(j) Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(k) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their respective successors and permitted assigns.

(l) Notices. All notices that may be given under this Agreement shall be in writing and shall be delivered by (i) hand; (ii) registered or certified mail; or (iii) facsimile (provided there is confirmation of receipt of complete transmission), to the following addresses and to the attention of the representative listed below or at such other addresses as may be later provided in accordance with this Section 13(l):

If to Company: INDUSTRIAL SCIENTIFIC CORPORATION
Attention: Contract Administrator
1 Life Way
Pittsburgh, PA 15205
Phone: 1-800-338-3287 Fax: 412-809-1813

If to Customer: City of Sacramento
Attention: Mark Laurenzi
1391 35th Avenue
Sacramento, CA 95660
Phone: 916-808-5674
Fax: 916-808-7955

Notices delivered personally shall be effective when delivered. Notices sent by facsimile shall be effective on the first business day following the date of complete transmission. Notices sent by registered or certified mail shall be effective when received.

COMPANY

INDUSTRIAL SCIENTIFIC CORPORATION

By: Garth F. Miller

Name: GARTH F. MILLER

Title: V.P. CUSTOMER OPERATIONS

CUSTOMER

CITY OF SACRAMENTO, CALIFORNIA

By: _____

Name: _____

Title: _____

SCHEDULE A

INSTALLATION SITE

Location 1: Fairbairn Water Treatment Plant

Customer Name: City of Sacramento
Address: 7501 College Town Dr

City: Sacramento
State/Prov.: CA Zip/Postal Code: 95826
Country: USA
Contact Name: Mary Krizanosky
Title: Supervising Plant Operator
Phone Number: 916-808-1311
Email Address: mkrizanosky@cityofsacramento.org
Fax Number: 916-808-3781

Location 2: Sacramento Water Treatment Plant

Customer Name: City of Sacramento
Address: 1 Water Street

City: Sacramento
State/Prov.: CA Zip/Postal Code: 95811
Country: USA
Contact Name: Dan Houston
Title: Supervising Plant Operator
Phone Number: 916-808-7082
Email Address: dhouston@cityofsacramento.org
Fax Number: 916-808-4969

Location 3: Combined Wastewater Treatment Plant

Customer Name: City of Sacramento
Address: 1391 35th Avenue

City: Sacramento
State/Prov.: CA Zip/Postal Code: 95822
Country: USA
Contact Name: Vern Fields
Title: Machinist Supervisor
Phone Number: 916-808-5542
Email Address: vfields@cityofsacramento.org
Fax Number: 916-808-7955

Billing Address: 1391 35th Avenue

City: Sacramento

State/Prov.: CA Zip/Postal Code: 95660

Country: USA

Billing Contact Name: Alaina Jordan

Phone Number: 916-808-1464

Email Address: ajordan@cityofsacramento.org

Fax Number: 916-808-7955

Purchase order number:

IT INFORMATION

IT Contact Name: Ron Fuiioka

Title: IT Supervisor

Phone Number: 916-808-1450

Email Address: lsouza@cityofsacramento.org

Fax Number: 916-808-7955

iNet CONTROL INFORMATION

Admin Contact Name: Deanne Neighbours

Title: Admin Tech

Phone Number: 916-808-3536

Email Address: dneighbours@cityofsacramento.org

Fax Number: 916-808-7955

COMPLETE SHADED AREAS

SCHEDULE B

EQUIPMENT SCHEDULE

Total Equipment

Ship-to: 5730 24th Street, Bldg #18 Sacramento, CA 95822

Qty	Part Number	Description
120	VTS-K1232010101	Ventis MX4 Multi-Gas Monitor, LEL (Pentane), CO, H2S, O2, Lithium-ion Extended Range Battery, Pump, Black, UL/CSA, English
1	MX6-LCG3Q211	MX6 iBrid Multi-Gas Monitor - LEL (CH4), H2, CO/H2 null, O2, CO2 (IR), Lithium-ion Extended Runtime Battery, Aspirated (pump), English
38	18100060-7	GasBadge Pro Single Gas Monitor - Chlorine (Cl2)
10	18109327-131	DSXi Cloud-Connected Docking Station for Ventis, 3 Inlet Ports, 2 iGas Readers, North America Power Cord
1	18109329-161	DSXi Cloud-Connected Docking Station for MX6 LS, 6 Inlet Ports, 5 iGas Readers, North America Power Cord
3	18109331-131	DSXi Cloud-Connected Docking Station for GasBadge Pro, 3 Inlet Ports, 2 iGas Readers, North America Power Cord
24	18105841	iGas Regulator w/Pressure Switch for 58, 103, 116L Cylinders
1	18105858	iGas Regulator w/Pressure Switch for 650L Cylinders
10	18102996	Cylinder, Calibration Gas 500 ppm Hydrogen (103L) - Initial Supply of Calibration Gas Only. Replacement cylinders must be purchased by customer.
10	18109251	Cylinder, Calibration Gas, CO, CO2, H2S, 18% O2, METH, 10AL - Initial Supply of Calibration Gas Only. Replacement cylinders must be purchased by customer.
3	18109082	Cylinder, Calibration Gas, 10 ppm CL2 (116 L) - Initial Supply of Calibration Gas Only. Replacement cylinders must be purchased by customer.
5	18101584	Cylinder of Calibration Gas- Zero Air (103 L) - Initial Supply of Calibration Gas Only. Replacement cylinders must be purchased by customer.
5	17124348	Wall/ Desk Mount Cylinder Holder (for use with, 34L, 58L, 103L, 116L and 552L cylinders)
5	18105924	iGas 5 Port Calibration Manifold
55	17152395	Barrier, Water, Asp - <i>Initial Supply of Filters Only. Replacement filters must be purchased by customer.</i>
5	17058157	Internal Dust Filter/Water Stop for Aspirated Monitors - <i>Initial Supply of Filters Only. Replacement filters must be purchased by customer.</i>

SCHEDULE C

**iNet™ Pre-Installation Acceptance Form
for “DSXi” docking station Rev 12**

Customer: Please complete and email to contractadminUS@indsci.com

Check this box to acknowledge that the DSXi will require access to the Internet and will upload data to Industrial Scientific.

Docking Stations will be setup with DHCP IP Addresses. If Static IP Addresses are required, please check this box and our team will contact you to discuss these requirements.

By default, Proxy Server Addresses are not setup for each Instrument Docking Station. If your organization utilizes Proxy Servers for Internet Access, check this box and our team will contact you to discuss these requirements.

Company Name: _____

Person Completing Form (Please Print): _____

Signature: _____

Email Address: _____

Date: _____

SCHEDULE D

SCHEDULE OF SERVICES

Company will perform the services relating to and consisting of the following:

Provide and install hardware and software as detailed in Schedule B, which shall calibrate and service the detection Equipment selected by Customer, and enable Customer to transmit detection readings to Company over the Internet.

Company will provide three (3) remote installations, commissionings and trainings

Monitor the condition of the instruments from information transmitted to Company via the Internet.

Provide replacement instrument(s) when an instrument problem is detected.

Provide rental equipment as needed. (Fees for rental equipment are not included in the monthly Subscription Fee and shall be determined at time of rental.)

SCHEDULE E

SCHEDULE OF SCREENING, BACKGROUND CHECKS AND TRAINING

Field Service Technicians have the following:

- 1) Drug and alcohol screening through DISA Contractors Consortium—Drug screening is done through urinalysis, hair follicle and breathalyzer tests. Screening is done pre-employment and on a random basis in which fifty percent (50%) of the technicians are tested every six (6) months. Company's DISA Number is: 7528.
- 2) Background checks through Justifacts Credential Verification, Inc. on a pre-employment basis.
- 3) Transportation Workers Identification Card ("TWIC")—issued through the US Department of Homeland Security and includes a comprehensive background check.

If Customer will require drug and alcohol screening or background checks in addition to those listed above, Customer agrees to pay all costs associated with such additional drug and alcohol screening or background checks.

Additionally, Customer may request that Field Service Technicians undergo any of the following safety-related training, provided a single training activity or any combination of training activities shall not exceed three (3) hours:

- 1) Watch a safety video less than one (1) hour in length;
- 2) Complete computer based training (CBT) less than one (1) hour in length located at the site the technician will be performing services; or
- 3) Receive oral safety training or briefing less than one (1) hour in length.

If Customer will require safety training in addition to that listed above or training longer than the time frame identified above (3 hours maximum), Customer agrees to pay all costs associated with such additional safety training and, in addition, to pay the current per day labor rate for a technician.