

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) NA
--	--

TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Public Utilities	DATE: 6/5/2015
---------------------	--	-------------------

SUBJECT: Agreement with Ocean Imaging, Inc. for Coastal Remote Sensing of the San Diego/Tijuana Region

PRIMARY CONTACT (NAME, PHONE): Tim Stebbins, 619-758-2329 MS 45A	SECONDARY CONTACT (NAME, PHONE): Maiko Kasuya, 619-758-2352 MS 45A
---	---

**COMPLETE FOR ACCOUNTING PURPOSES**

FUND	700001				
FUNCTIONAL AREA	OTHR-00000000-SU				
COST CENTER	2000161311				
GENERAL LEDGER ACCT	512059				
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	\$0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

**COST SUMMARY (IF APPLICABLE):** FY2016 - \$215,000  
 FY2017 - \$220,000 Option Year 1  
 FY2018 - \$231,000 Option Year 2  
 FY2019 - \$245,000 Option Year 3  
 FY2020 - \$255,000 Option Year 4  
 Total Not to Exceed Agreement - \$1,166,000

**ROUTING AND APPROVALS**

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Financial Management	ORIG DEPT.	Mulvey, Robert	06/17/2015
Equal Opportunity Contracting	CFO		
Environmental Analysis	DEPUTY CHIEF	Gomez, Paz	07/08/2015
Liaison Office	COO		
Comptroller	CITY ATTORNEY	Leone, Christine	06/23/2015
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF:     RESOLUTIONS     ORDINANCE(S)     AGREEMENT(S)     DEED(S)

1. Authorizing the Mayor or his designee to execute an agreement with Ocean Imaging, Inc. for coastal remote sensing services in an amount not to exceed \$1,166,000 for Fiscal Years 2016-2020.

2. Authorizing the Chief Financial Officer to expend an amount not to exceed \$1,166,000 from Metro Sewer Utility Fund 700001 for the purposes of funding this agreement, of which \$215,000 is for Fiscal Year 2016, and \$951,000 is for the total of the four option years, estimated to be spent as follows: \$220,000 in FY17; \$231,000 in FY18; \$245,000 in FY19; \$255,000 in FY20, contingent upon adoption of the Annual Appropriation Ordinance for the applicable fiscal year, and contingent upon the City Comptroller first furnishing one or more certificates certifying that the funds necessary for expenditures are, or will be, on deposit with the City Treasurer.

3. Determining that this activity is a Class 6 Project, categorically exempt from CEQA pursuant to the State CEQA Guidelines Section 15306 (Information Collection).

4. Declaring that the Council of the City of San Diego has determined that an exception to the exemption as set forth in CEQA Guidelines Section 15300.2 does not apply.

**STAFF RECOMMENDATIONS:**

Approve the requested actions

**SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)**

**COUNCIL DISTRICT(S):** All

**COMMUNITY AREA(S):** Citywide

**ENVIRONMENTAL IMPACT:** This activity is a Class 6 Project, categorically exempt from CEQA pursuant to the State CEQA Guidelines Section 15306 (Information Collection).

**CITY CLERK  
INSTRUCTIONS:**

**COUNCIL ACTION**  
**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE: 6/5/2015

ORIGINATING DEPARTMENT: Public Utilities

SUBJECT: Agreement with Ocean Imaging, Inc. for Coastal Remote Sensing of the San Diego/Tijuana Region

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Tim Stebbins/619-758-2329 MS 45A

**DESCRIPTIVE SUMMARY OF ITEM:**

This action is requesting approval of the agreement for Ocean Imaging, Inc. for providing satellite and aerial coastal remote sensing services to maintain the City's regulatory and contractual obligations for the Point Loma and South Bay Outfall region. The agreement requires the City of San Diego to fund this project for a total of \$1,166,000 for Fiscal Years 2016-2020.

**STAFF RECOMMENDATION:**

Approve the requested actions

**EXECUTIVE SUMMARY OF ITEM BACKGROUND:**

The City of San Diego's Ocean Monitoring Program is conducted as a requirement of two NPDES regulatory permits issued by the San Diego Regional Water Quality Control Board and U.S. Environmental Protection Agency for the Point Loma Wastewater Treatment Plant (PLWTP) and South Bay Water Reclamation Plant (SBWRP). In addition to mandatory core and regional monitoring requirements, these permits require the City to conduct additional "strategic process studies" such as the within referenced "Coastal Remote Sensing" project to address emerging issues of concern to the City, federal and state regulators, and the public in order to develop a broader understanding of San Diego's coastal marine ecosystem.

The remote sensing services provided by Ocean Imaging are essential to the Public Utilities Department being able to meet its environmental monitoring objectives, commitments, and regulatory permit requirements associated with the discharge of wastewater to the Pacific Ocean via the Point Loma Ocean Outfall (PLOO) and South Bay Ocean Outfall (SBOO). This work is also part of a multi-year contractual agreement the City has with the U.S. Section of the International Boundary and Water Commission (USIBWC) to provide ocean monitoring services for the SBOO region associated with operation of the International Wastewater Treatment Plant, for which the City is reimbursed by the USIBWC for approximately \$1M/year. The project also represents a long-term collaboration between the City and USIBWC that was initiated by the Regional Water Board about 13 years ago in 2002.

The monitoring conducted by Ocean Imaging utilizes various aerial and satellite sensors in the visible, near-infrared, and thermal infrared to detect patterns in natural oceanographic variables, point and non-point source terrestrial runoff, and anthropogenic sources such as San Diego's two large ocean outfalls. These image data and subsequent advanced analyses are utilized to spatially and temporally enhance regular field sampling surveys conducted by City marine biologists, and to help interpret the results from those surveys. In the early years of the project efforts were

focused primarily on the detection and monitoring of the PLOO and SBOO wastewater plumes, and in tracking nearshore runoff plumes originating from historically high contamination sources such as the Tijuana River and Los Buenos Creek. The project's objectives later expanded to include a newer generation of multiple spatial data products on a larger, regional scale to provide information on oceanic variables affecting all of San Diego's coastal waters. Important results from the project include the determination of dispersal pattern trends of the SBOO plume when it reaches the ocean's surface waters, dispersal pattern trends of storm water runoff from multiple shoreline point sources and their relation to beach contamination potential along all of San Diego's coastline, as well as short term patterns and long-term trends of oceanic phenomena such as phytoplankton blooms and red tides, and growth cycles of the region's giant kelp forests.

Continuation of this long-term project to better understand coastal water quality conditions off San Diego is a critical component of the City's "Proposed Monitoring Program" included in the Point Loma NPDES Permit 301(h) Renewal Application recently submitted to USEPA and the San Diego Regional Water Board. The project also exemplifies the commitment of Public Utilities to provide advanced, scientifically sound, and cost-effective services to protect the region's coastal marine ecosystem and natural resources.

#### CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal 1: Provide high quality public service

Objective 4: Ensure equipment and technology are in place so that employees can achieve high quality public service

Goal 2: Work in partnership with all of our communities to achieve safe and livable neighborhoods

Objective 1: Protect lives, property, and the environment through timely and effective response in all communities

Goal 3: Create and sustain a resilient and economically prosperous City

Objective 4: Prepare and respond to climate change

Objective 5: Enhance San Diego's global standing

#### FISCAL CONSIDERATIONS:

The total not to exceed amount of this agreement is \$1,166,000, of which \$215,000 is for Fiscal Year 2016 and \$951,000 is for the total of the four option years. Funding is, or will be, available in the Metro Sewer Utility Fund 700001, contingent upon adoption of the Annual Appropriation Ordinance for the applicable fiscal year, and contingent upon the City Comptroller first furnishing one or more certificates certifying that the funds necessary for expenditures are, or will be, on deposit with the City Treasurer. The four option years are estimated to be spent as follows: \$220,000 in FY17; \$231,000 in FY18; \$245,000 in FY19; and \$255,000 in FY20.

#### EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No.18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance(San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Ocean Imaging, Inc, City of San Diego, International Boundary and Water Commission, U.S. Section (USIBWC)

This agreement will allow Ocean Imaging to continue providing the City multi-source satellite imaging of the San Diego to Mexico coastal border region. Synoptic views of typical surface water conditions and insight into anomalous conditions in the region in conjunction with data collected by field sampling are essential in evaluating water quality and trends in coastal marine environment. The results of the long-term collaborated study between the City and Ocean Imaging are a part of the new Point Loma 301(h) permit renewal and waiver application.

Mulvey, Robert

Originating Department

Gomez, Paz

Deputy Chief/Chief Operating Officer

DOCKET SUPPORTING INFORMATION CITY OF SAN DIEGO <b>EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION</b>	DATE: June 17, 2015
SUBJECT: Agreement with Ocean Imaging, Inc. for Coastal Remote Sensing of the San Diego/Tijuana Region	

**GENERAL CONTRACT INFORMATION**

Recommended Agency: Atoll Ventures dba Ocean Imaging, Inc (Not Certified, M Cauc)

**Amount of this Action: \$ 1,166,000.00 (FY 2016-2020) (Not to Exceed)**  
 \$ 215,000.00 (FY 2016)  
 \$ 220,000.00 (FY 2017, Option Year 1)  
 \$ 231,000.00 (FY 2018, Option Year 2)  
 \$ 245,000.00 (FY 2019, Option Year 3)  
 \$ 255,000.00 (FY 2019, Option Year 4)

Funding Source: City of San Diego

Goal: N/A

**SUBCONTRACTOR PARTICIPATION**

There is no subcontractor associated with this action; however, subsequent actions must adhere to funding agency requirements.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required

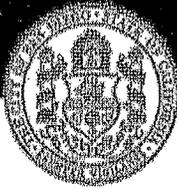
Atoll Ventures dba Ocean Imaging, Inc submitted a Work Force Report for their San Diego County employees dated, May 22, 2015 indicating 4 employees in their Administrative Work Force. The firm has fewer than 15 employees and therefore, is exempt from the employment category goals.

This agreement is subject to the City’s Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and is subject to the City’s Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**ADDITIONAL COMMENTS**

Critical component of the City’s “Proposed Monitoring Program” included in the Point Loma NPDES Permit 301(h) Renewal Application recently submitted to USEPA and the San Diego Regional Water Board. Sole source memo # 3559 dated May 12, 2015.

**RW**



THE CITY OF SAN DIEGO

CONSULTANT AWARD TRACKING FORM

Consultant Award Tracking Form: The purpose of this form is to track the cumulative amount of money awarded to both architectural and engineering (A&E) firms and non-A&E firms; and to ensure that the cumulative amount of money awarded to consultant does not exceed \$250,000 for non-CIP funded contracts and \$1,000,000 for CIP funded contracts in a fiscal year including this contract. If this cumulative award limit is exceeded, inclusive of this contract award, Council approval is required.

A copy of this form must be attached to forms Mayoral Action PA-2625, Mayoral Action 1544, Council Action 1472 and Purchase Orders for processing.

THIS SECTION TO BE COMPLETED BY CITY STAFF

Date: 5/11/2015 Department Name: PUBLIC UTILITIES DEPARTMENT
City Project Manager: Maiko Kasuya
Name of Firm: Ocean Imaging
Project Name: Coastal Remote Sensing of the SD/TJ Region
Contract Amount: \$ 1,166,000

Appropriate approval authority:

- Mayoral Action PA-2625
Mayoral Action 1544
Council Action 1472
Purchase Order

THIS SECTION TO BE COMPLETED AND REVIEWED BY CONSULTANT

The City reserves the right to disqualify any Consultant if this tracking form is not completely and accurately executed prior to the contract award.

If it is determined subsequent to the contract award that this tracking form was not accurately executed, the underlying contract will be illegal and deemed void if awarded without Council approval and it is beyond the limits set in Municipal Code Section 22.3207. In such an instance, the City shall not be responsible for any losses or damages which may result from the void contract and reserves the right in its sole discretion to award the contract to another consultant.

Dollar amount awarded to the consultant by the City of San Diego this fiscal year (July 1 through June 30) including this contract: \$ 215,000.

I hereby certify that I am an authorized representative of:

Ocean Imaging Corp. (Name of Firm)

and that I have read and understand this form this 22 day of May 2015 (Day) (Month) (Year)

By Jan Svejksky (SIGNATURE of Authorized Representative)

Jan Svejksky (PRINTED name of Authorized Representative)

City of San Diego Purchasing & Contracting Department  
**CONTRACTOR STANDARDS**  
*Pledge of Compliance*

Effective December 24, 2008, the Council of the City of San Diego adopted Ordinance No. O-19808 to extend the Contractor Standards Ordinance to all contracts greater than \$50,000. The intent of the Contractor Standards clause of San Diego Municipal Code §22.3224 is to ensure the City of San Diego conducts business with firms that have the necessary quality, fitness and capacity to perform the work set forth in the contract.

To assist the Purchasing Agent in making this determination and to fulfill the requirements of §22.3224(d), each bidder/proposer must complete and submit this *Pledge of Compliance* with the bid/proposal. If a non-competitive process is used to procure the contract, the proposed contractor must submit this completed *Pledge of Compliance* prior to execution of the contract. A submitted *Pledge of Compliance* is a public record and information contained within will be available for public review for at least ten (10) calendar days, except to the extent that such information is exempt from disclosure pursuant to applicable law.

All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, respondents must use the *Pledge of Compliance Attachment "A"* and sign each page. The signatory guarantees the truth and accuracy of all responses and statements. Failure to submit this completed *Pledge of Compliance* may make the bid/proposal non-responsive and disqualified from the bidding process. If a change occurs which would modify any response, Contractor must provide the Purchasing Agent an updated response within thirty (30) calendar days.

**A. PROJECT TITLE:**

Coastal Remote Sensing of the SD/TJ Region

**B. BIDDER/CONTRACTOR INFORMATION:**

Atoll Ventures Corp. Ocean Imaging Corp.  
Legal Name DBA  
201 Lomas Santa Fe Dr. Solana Beach CA 92075  
Street Address City State Zip  
J. Szejka President 858-792-8529 858-792-8761  
Contact Person Title Phone Fax

**C. OWNERSHIP AND NAME CHANGES:**

1. In the past five (5) years, has your firm changed its name?

Yes

No

If Yes, use *Pledge of Compliance Attachment "A"* to list all prior legal and DBA names, addresses and dates when used. Explain the specific reasons for each name change.

2. In the past five (5) years, has a firm owner, partner or officer operated a similar business?

Yes

No

If Yes, use *Pledge of Compliance Attachment "A"* to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner or officer of your firm holds or has held a similar position in another firm.

D. **BUSINESS ORGANIZATION/STRUCTURE:** Indicate the organizational structure of your firm. Check one only on this page. Use *Pledge of Compliance Attachment "A"* if more space is required.

Corporation Date incorporated: 2/21/1989 State of incorporation: California

List corporation's current officers: President: Jan Svejkovsky  
Vice Pres: "  
Secretary: "  
Treasurer: "

Is your firm a publicly traded corporation? Yes  No

If Yes, name those who own five percent (5%) or more of the corporation's stocks:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Limited Liability Company Date formed: \_\_\_/\_\_\_/\_\_\_ State of formation: \_\_\_\_\_

List names of members who own five percent (5%) or more of the company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Partnership Date formed: \_\_\_/\_\_\_/\_\_\_ State of formation: \_\_\_\_\_

List names of all firm partners:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sole Proprietorship Date started: \_\_\_/\_\_\_/\_\_\_

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Joint Venture Date formed: \_\_\_/\_\_\_/\_\_\_

List each firm in the joint venture and its percentage of ownership:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Note:** Each member of a Joint Venture must complete a separate *Contractor Standards Pledge of Compliance* for a Joint Venture's submission to be considered responsive.

**E. FINANCIAL RESOURCES AND RESPONSIBILITY:**

1. Is your firm in preparation for, in the process of, or in negotiations toward being sold?  
Yes  No

If Yes, use *Pledge of Compliance Attachment "A"* to explain specific circumstances, including name of the buyer and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?  
Yes  No

If Yes, use *Pledge of Compliance Attachment "A"* to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?  
Yes  No

If Yes, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

**F. PERFORMANCE HISTORY:**

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?  
Yes  No

If Yes, use *Pledge of Compliance Attachment "A"* to explain specific circumstances.

2. In the past five (5) years, has a government agency terminated your firm's contract prior to completion?  
Yes  No

If Yes, use *Pledge of Compliance Attachment "A"* to explain specific circumstances and provide principal contact information.

**G. COMPLIANCE:**

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executives or management been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement for violating any federal, state or local law in performance of a contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees?  
Yes  No

If Yes, use *Pledge of Compliance Attachment "A"* to explain specific circumstances surrounding each instance; include name of entity involved, specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been debarred or determined to be non-responsible by a government agency?  
Yes  No

If Yes, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include name of entity involved, specific infraction, dates, and outcome.

**H. BUSINESS INTEGRITY:**

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or governmental entity?

Yes

No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s) or violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?

Yes

No

If **Yes**, use *Pledge of Compliance Attachment "A"* to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

**I. TYPE OF SUBMISSION:** This document is submitted as:

Initial submission of *Contractor Standards Pledge of Compliance*.

Update of prior *Contractor Standards Pledge of Compliance* dated \_\_\_\_/\_\_\_\_/\_\_\_\_.

**Complete all questions and sign below. Each Pledge of Compliance Attachment "A" page must be signed.**

Under penalty of perjury under the laws of the State of California, I certify I have read and understand the questions contained in this *Pledge of Compliance* and that I am responsible for completeness and accuracy of responses and all information provided is true to the best of my knowledge and belief. I further certify my agreement to the following provisions of San Diego Municipal Code §22,3224:

- (a) To comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- (b) To notify the Purchasing Agent within fifteen (15) calendar days upon receiving notification that a government agency has begun an investigation of the Contractor that may result in a finding that the Contractor is or was not in compliance with laws stated in paragraph (a).
- (c) To notify the Purchasing Agent within fifteen (15) calendar days when there has been a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).
- (d) To provide the Purchasing Agent updated responses to the *Contractor Standards Pledge of Compliance* within thirty (30) calendar days if a change occurs which would modify any response.
- (e) To notify the Purchasing Agent within fifteen (15) days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).
- (f) To cooperate fully with the Purchasing Agent and the City during any investigation and to respond to a request for information within ten (10) working days from the request date.

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive.

Jan Svejkovsky President      Jan Svejkovsky      5/22/2015  
Print Name, Title                      Signature                      Date

City of San Diego Purchasing & Contracting Department  
CONTRACTOR STANDARDS

*Pledge of Compliance Attachment "A"*

Provide additional information in space below. Use additional *Pledge of Compliance Attachment "A"* pages as needed; sign each page. Print in ink or type responses and indicate question being answered. Information provided will be available for public review, except if exempt from disclosure pursuant to applicable law.

[Empty response area for contractor information]

Under penalty of perjury under the laws of the State of California, I certify I have read and understand the questions contained in this *Contractor Standards Pledge of Compliance* and that I am responsible for completeness and accuracy of responses on this *Pledge of Compliance Attachment "A"* page and all information provided is true to the best of my knowledge.

Jan Svejkosky President      Jan Svejkosky      5/22/2015  
Print Name, Title                      Signature                      Date



City of San Diego  
**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)**  
 1010 Second Avenue • Suite 1400 • MS 614C • San Diego, CA 92101  
 Phone: (619) 533-3450 • Fax: (619) 533-3633

## WORK FORCE REPORT

### ADMINISTRATIVE

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

### CONTRACTOR IDENTIFICATION

Type of Contractor:       Construction       Vendor/Supplier       Financial Institution       Lessee/Lessor  
     Consultant       Grant Recipient       Insurance Company       Other

Name of Company: Atoll Ventures Corp

AKA/DBA: Ocean Imaging

Address (Corporate Headquarters, where applicable): 201 Lomas Santa Fe Dr, Suite 370

City Solana Beach County San Diego State CA Zip 92075

Telephone Number: (858) 792-8529 FAX Number: (858) 792-8761

Name of Company CEO: Jan Svejksky

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: (same as above)

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ FAX Number: ( ) \_\_\_\_\_

Type of Business: Environmental Services Type of License: \_\_\_\_\_

The Company has appointed: Paula Klein

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 201 Lomas Santa Fe Dr., Suite 370, Solana Beach CA 92075

Telephone Number: (858) 792-8529 FAX Number: (858) 792-8761

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force \*
- Managing Office Work Force

*Check the box above that applies to this WFR.*

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of Ocean Imaging

San Diego, CA (Firm Name) hereby certify that information provided

(County) (State)

herein is true and correct. This document was executed on this 22nd day of May, 2015.

Jan Svejksky  
 (Authorized Signature)

Jan Svejksky  
 (Print Authorized Signature)

WORK FORCE REPORT - NAME OF FIRM: Ocean Imaging

DATE: 5/22/2015

OFFICE(S) or BRANCH(ES): Solana Beach, CA

COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial												1		
Professional														
A&E, Science, Computer														
Technical														
Sales														
Administrative Support													1	
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column												1	1		
--------------------	--	--	--	--	--	--	--	--	--	--	--	---	---	--	--

Grand Total All Employees 2

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled

Disabled												0	0		
----------	--	--	--	--	--	--	--	--	--	--	--	---	---	--	--

Non-Profit Organizations Only:

Board of Directors															
Volunteers															
Artists															



City of San Diego  
**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)**  
 1010 Second Avenue • Suite 1400 • MS 614C • San Diego, CA 92101  
 Phone: (619) 533-3450 • Fax: (619) 533-3633

## WORK FORCE REPORT

### ADMINISTRATIVE

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

### CONTRACTOR IDENTIFICATION

Type of Contractor:       Construction       Vendor/Supplier       Financial Institution       Lessee/Lessor  
     Consultant       Grant Recipient       Insurance Company       Other

Name of Company: Atoll Ventures Corp  
 AKA/DBA: Ocean Imaging  
 Address (Corporate Headquarters, where applicable): 13976 W Bowles Ave, Suite 100  
 City Littleton County Denver State CO Zip 80127  
 Telephone Number: (303) 948-5272 FAX Number: (303) 948-2549  
 Name of Company CEO: Jan Svejksky  
 Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):  
 Address: (HQ) 201 Lomas Santa Fe Dr, Suite 370  
 City Solana Beach County San Diego State CA Zip 92075  
 Telephone Number: (858) 792-8529 FAX Number: (858) 792-8761  
 Type of Business: Environmental Services Type of License: \_\_\_\_\_  
 The Company has appointed: Mark Hess  
 as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:  
 Address: 13976 W Bowles Ave Suite 100, Littleton CO 80127  
 Telephone Number: (303) 948-5272 FAX Number: (303) 948-2549

- One San Diego County (or Most Local County) Work Force - Mandatory  
 Branch Work Force \*  
 Managing Office Work Force

*Check the box above that applies to this WFR.*

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of Ocean Imaging  
 \_\_\_\_\_  
 \_\_\_\_\_ (Firm Name)  
San Diego, CA hereby certify that information provided  
 \_\_\_\_\_, \_\_\_\_\_  
 \_\_\_\_\_ (County) \_\_\_\_\_ (State)  
 herein is true and correct. This document was executed on this 22nd day of May, 2015.  
 \_\_\_\_\_  
 \_\_\_\_\_ (Authorized Signature)      Jan Svejksky  
 \_\_\_\_\_ (Print Authorized Signature)

WORK FORCE REPORT -- NAME OF FIRM: Ocean Imaging

DATE: 5/22/2015

OFFICE(S) or BRANCH(ES): Littleton, CO

COUNTY: Denver

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1)		(2)		(3)		(4)		(5)		(6)		(7)	
	(M)	(F)												
Management & Financial												1		
Professional														
A&E, Science, Computer												2	1	
Technical														
Sales														
Administrative Support														
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column												3	1	
--------------------	--	--	--	--	--	--	--	--	--	--	--	---	---	--

Grand Total All Employees 4

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled

Disabled												0	0	
----------	--	--	--	--	--	--	--	--	--	--	--	---	---	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														



# CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE

## HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

## WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.<sup>1</sup> By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.<sup>2</sup> For example, if participation in a San Diego project is by work forces from San Diego County, Los Angeles County and Sacramento County, we will ask for separate Work Force Reports representing the work forces of

your firm from each of the three counties.<sup>1,2</sup> On the other hand, if the project will be accomplished completely outside of San Diego, we ask for a Work Force Report from the county or counties where the work will be accomplished.<sup>2</sup>

## MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.<sup>1,3</sup> In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.<sup>3</sup>

## TYPES OF WORK FORCE REPORTS

Please note, throughout the preceding text of this page, the superscript numbers one <sup>1</sup>, two <sup>2</sup> & three <sup>3</sup>. These numbers coincide with the types of work force report required in the example. See below:

- <sup>1</sup> One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- <sup>2</sup> Branch Work Force\*
- <sup>3</sup> Managing Office Work Force

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county*

## **Exhibit: Work Force Report Job categories**

Refer to this table when completing your firm's Work Force Report form(s).

### **Management & Financial**

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

### **Professional**

Art and Design Workers
Counselors, Social Workers, and Other Community and Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers

Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

### Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

### Technical

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

### Sales

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

### Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

### Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers

Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

### Crafts

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

### Operative Workers

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

### Transportation

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

### Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers



## CONSULTANT PAST PARTICIPATION LIST

The Consultant shall complete this form for each project listed in response to the RFP. The Consultant Past Participation List shall include name, address, telephone number (including area code), classification, type of work, dollar amount of participation, certification, and certifying agency for each Subcontractor or Supplier who participated in the referenced project.

NAME OF PROJECT: Coastal Remote Sensing of the SD/TJ Region  
 TYPE OF PROJECT: Environmental Monitoring DOLLAR VALUE  
 OF CONTRACT: \$ 1,166,000

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONTRACTOR, DESIGNER, SUPPLIER, OR VENDOR	TYPE OF WORK PERFORMED, MATERIALS OR SUPPLIES	DOLLAR AMOUNT OF SUBCONTRACTOR PARTICIPATION OR MATERIALS OR SUPPLIES
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____	None		
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____			
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____			

① As appropriate, Consultant shall identify Subcontractors or Suppliers as one of the following and shall include a valid proof of certification (except for OBE):

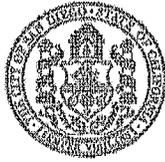
- |   |       |  |
|---|-------|--|
| Certified Minority Business Enterprise        | MBE   | Certified Woman Business Enterprise          |
| Certified Disadvantaged Business Enterprise   | WBE   | Certified Disabled Veteran                   |
| Business Enterprise                           | DBE   | Certified Emerging Local Business Enterprise |
| Other Business Enterprise                     | DVBE  | Small Disadvantaged Business                 |
| Business Enterprise                           | OBE   | HUBZone Business                             |
| Certified Small Local Business Enterprise     | ELBE  |  |
| Business                                      | SLBE  |  |
| Woman-Owned Small Business                    | SDB   |  |
| Service-Disabled Veteran Owned Small Business | WoSB  |  |
|   | SDVOB |  |

② As appropriate, Consultant shall indicate if Subcontractor or Supplier is certified by:

- |  |          |  |
|--|----------|--|
| City of San Diego                                    | CITY     | State of California                                    |
| Department of Transportation                         | CALTRANS | San Diego Regional Minority Supplier Diversity Council |
| California Public Utilities Commission               | CPUC     | City of Los Angeles                                    |
| Supplier Diversity Council                           | SRMSDC   | U.S. Small Business Administration                     |
| State of California's Department of General Services | CADeGS   |  |
| State of California Administration                   | CA       |  |
|  | SBA      |  |

**The Consultant will not receive any points for past subcontracting participation percentages if the Consultant fails to submit the required proof of certification.**

**EQUAL BENEFITS ORDINANCE  
CERTIFICATION OF COMPLIANCE**



For additional information, contact:

**CITY OF SAN DIEGO  
EQUAL BENEFITS PROGRAM**

202 C Street, MS 9A, San Diego, CA 92101  
Phone (619) 533-3948 Fax (619) 533-3220

**COMPANY INFORMATION**

Company Name: Ocean Imaging Corp. Contact Name: Jan Svejkovsky  
 Company Address: 201 Lomas Santa Fe Dr., Suite 370 Contact Phone: 858-792-8529  
Solana Beach CA 92075 Contact Email: jan@oceani.com

**CONTRACT INFORMATION**

Contract Title: Coastal Remote Sourcing of the SD/TJ Region Start Date: 7/1/2015  
 Contract Number (if no number, state location): End Date: 6/30/20

**SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS**

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
  - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.
  - Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.
- Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.
- Contractor shall submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at [www.sandiego.gov/administration](http://www.sandiego.gov/administration).

**CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION**

Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.

- I affirm compliance with the EBO because my firm (*contractor must select one reason*):
- Provides equal benefits to spouses and domestic partners.
  - Provides no benefits to spouses or domestic partners.
  - Has no employees.
  - Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.

- I request the City's approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]

Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.

Jan Svejkovsky, President      Jan Svejkovsky      5/22/2015  
 Name/Title of Signatory      Signature      Date

**FOR OFFICIAL CITY USE ONLY**

Receipt Date:      EBO Analyst:       Approved       Not Approved – Reason:

**City of San Diego**  
**Human Resources Department**  
**Request for Human Resources Approval for Purchase Requisition**

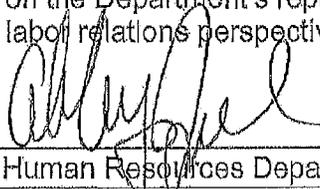
RECEIVED  
MAY 19 2014

Requesting Department: Public Utilities/EMTS  
Vendor Name: Atoll Ventures DBA Ocean Imaging  
Purchase Requisition #: NA  
Department Contact: Tim Stebbins/Angela Laurita  
Date of Request: 5/13/14  
Contract Amount: \$1,166,000

*Please submit request to [HumanResources@sanidiego.gov](mailto:HumanResources@sanidiego.gov) or MS 56L*

Question	Department Response
What is the contract for?	To provide pictures from satellites and aerial over-flights of the coastline off Point Loma at the US/Mexico border as mandated in the permit for the operation of the Point Loma Wastewater Treatment Plant and discharge into the ocean.
Are City employees currently performing any of the work?	City employees do not perform this type of work.
Will any City employees be displaced as a result of this bid?	No City employees will be displaced.
If this is a renewal of an existing contract, how long have these services been contracted out?	At least for five years
Is this a Public Works Contract? (construction, reconstruction or repair of City buildings, street or other facilities)	This is not a Public Works contract
Is this a Tenant Improvement?	No
Was another department contacted to determine if they can or do perform this service (i.e. Streets, Facilities, etc.)? If so, please attach communication.	Public Utilities is the only department involved in the Ocean Monitoring program and this type of service is not performed by anyone in the City or the department.

*NOTE: If a public works construction contract and over \$100k, see City Charter Section 94.*

<b><u>HUMAN RESOURCES DEPARTMENT USE ONLY</u></b>	
Based on the Department's representation, this contract is from a labor relations perspective.	<input checked="" type="checkbox"/> <b>APPROVED</b>
 <hr/> Human Resources Department Liaison	5/19/14 <hr/> Date

**CONSULTANT SERVICES AGREEMENT**

**BETWEEN THE**

**CITY OF SAN DIEGO**



**AND**

**OCEAN IMAGING, INC.**

**FOR COASTAL REMOTE SENSING OF THE SAN DIEGO/TIJUANA REGION**

## CONSULTANT SERVICES AGREEMENT

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

### RECITALS

City wishes to retain Consultant to provide marine and coastal remote sensing services (Services).

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

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

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

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

### ARTICLE I CONSULTANT SERVICES

**1.1 Scope of Services.** Consultant shall provide the Services to City as described in Exhibit A, Scope of Services at the rate described in the Compensation and Fee Schedule, attached hereto as Exhibit B, in accordance with the Time Schedule, attached hereto as Exhibit C, in accordance with the City's General Terms and Conditions attached hereto as Exhibit D.

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

Maiko Kasuya, Marine Biologist II  
2392 Kincaid Rd  
619-758-2352  
mkasuya@sandiego.gov

**1.3 Written Authorization.** City shall issue a written authorization to proceed before Consultant is authorized to perform Services.

**1.4 Duty to Inform City of Changes in Scope of Services.** Consultant shall immediately advise the City in writing of any anticipated change in the Scope of Services, Compensation and Fee Schedule, or Time Schedule, and shall obtain the City's written consent to the change prior

to making any changes. In no event shall the City's consent be construed to relieve Consultant from its duty to render all Services in accordance with applicable law and industry standards.

**1.5 Competitive Bidding.** If applicable, Consultant shall ensure that any plans, specifications, studies, or reports prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall prepare such plans, specifications, studies, or reports so that procurement of services, labor or materials are not available from only one source, and shall not prepare plans, specifications, studies, or reports around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by City. Consultant shall submit this written justification to City prior to beginning work on such plans, specifications, studies, or reports. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Services.

**ARTICLE II  
DURATION OF AGREEMENT**

**2.1 Term.** This Agreement shall be for a period of **one year, beginning July 1, 2015 and ending June 30, 2016**, unless extended by the City through an option to extend/renew, or unless otherwise terminated. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

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

**ARTICLE III  
COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Consultant for performance of all Services rendered in accordance with this Agreement in an amount not to exceed **\$215,000**. If the Agreement term is extended, the compensation payable to Consultant shall be in accordance with the schedule below. The maximum total compensation payable to Consultant shall not exceed **\$1,166,000**.

<u>Contract Term</u>	<u>Dates</u>	<u>Total Not to Exceed Amount</u>
Initial	July 1, 2015 – June 30, 2016	\$215,000
Option 1	July 1, 2016 – June 30, 2017	\$220,000
Option 2	July 1, 2017 – June 30, 2018	\$231,000
Option 3	July 1, 2018 – June 30, 2019	\$245,000
Option 4	July 1, 2019 – June 30, 2020	\$255,000

<b>Total</b>	<b>\$1,166,000</b>
--------------	--------------------

**3.2 Additional Services.** City may require Consultant to perform additional Services beyond those described in the Scope of Services (Additional Services). Before Consultant commences such work, the Parties must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with Section 3.3.

**3.3 Manner of Payment.** City shall pay Consultant in accordance with the Compensation and Fee Schedule. Consultant is not entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. Consultant shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. Consultant shall include with each invoice a description of completed Services, reasonably related expenses, if any, and all other information, including but not limited to the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. City will pay undisputed portions of invoices within thirty calendar days of receipt.

**3.4 Additional Costs.** Additional Costs are costs that can be reasonably determined to be related to Consultant's errors or omissions, and may include Consultant, City, or Subcontractor overhead, construction, materials, demolition, and related costs. Consultant shall not be paid for the Services required due to the Consultant's errors or omissions, and Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, to Consultant. Whether or not there are any monies due, or becoming due, Consultant shall reimburse City for Additional Costs due to Consultant's errors or omissions.

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

**ARTICLE IV  
[RESERVED]**

**ARTICLE V  
CONSULTANT'S OBLIGATIONS**

**5.1 Right to Audit.** City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subcontractor's premises, to review and audit Consultant's or Subcontractor's compliance with the provisions of this Agreement (City's Right). City's Right includes the right to inspect, photocopy, and retain copies of any and all books, records, documents and any other information (Records) relating to this Agreement outside of

Consultant's premises if deemed necessary by City in its sole discretion. City shall keep these Records confidential to the extent permitted by law.

**5.1.1 Audit.** City's Right includes the right to examine Records of procedures and practices that City determines are necessary to discover and verify that Consultant or Subcontractor is in compliance with all requirements under this Agreement.

**5.1.2 Cost Audit.** If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to Records that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

**5.1.3 Accounting Records.** Consultant and all subcontractors shall maintain complete and accurate Records in accordance with generally accepted accounting practices. Consultant and Subcontractors shall make available to City for review and audit all Records relating to the Services. Upon City's request, Consultant and Subcontractors shall submit exact duplicates of originals of all requested records to City.

**5.1.4 City's Right Binding on Subcontractors.** Consultant shall include City's Right as described in this Section 5.1 in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors.

**5.2 Subcontractors.** Consultant's hiring or retaining of any third parties (Subcontractors) to perform Services (Subcontractor Services) is subject to City's prior written approval. Consultant shall list all Subcontractors known to Consultant on the Subcontractor List at the time this Agreement is entered. Consultant shall give written notice to the City of the need at least 45 days before entering into a contract for such Subcontractor Services. Consultant's notice shall include a justification, a description of the Scope of Services, and an estimate of all costs for Subcontractor Services. Consultant may request that City reduce the 45-day notice period. City agrees to consider such requests in good faith.

**5.2.1 Subcontractor Contract.** Consultant shall require Subcontractor to obtain and maintain insurance policies as required by City for the duration of this Agreement. Consultant shall determine Subcontractor policy limits and required endorsements proportionate to the services performed by Subcontractor.

**5.2.1.1** Consultant is obligated to pay Subcontractor, for Consultant and City-approved invoice amounts, out of amounts paid by City to Consultant not later than fourteen working days from Consultant's receipt of payment from City. Nothing in this paragraph shall be construed to impair the right of Consultant and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

**5.2.1.2** If Subcontractor's performance is deficient, Consultant shall notify City in writing of any withholding of payment to Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action Subcontractor must take in order to receive the amount withheld. Once

Subcontractor corrects the deficiency, Consultant shall pay Subcontractor the amount withheld within fourteen working days of the Consultant's receipt of City's next payment.

**5.2.1.3** City shall not be made a party to any judicial or administrative proceeding to resolve any dispute between Consultant and Subcontractor. Consultant agrees to defend and indemnify the City as described in the City's General Terms and Conditions, attached hereto as Exhibit D, and incorporated by reference, in any dispute between Consultant and Subcontractor should City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

**5.2.1.4** Subcontractor must comply with the City's Equal Opportunity Contracting Program requirements.

**5.2.1.5** City is an intended beneficiary of any work performed by Subcontractor for purposes of establishing a duty of care between Subcontractor and City.

**5.3 Contract Activity Report.** Consultant shall submit statistical information to City as requested in City's Contract Activity Report. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, Consultant shall provide an invoice from each Subcontractor listed in the report. Consultant agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subcontractor Services.

**5.4 Consultant and Subcontractor Principals for Consultant Services.** This Agreement is for unique Services. City has retained Consultant based on Consultant's particular professional expertise as exhibited by the following members of the Consultant's organization: [List individuals by name and title] (the Project Team). Consultant may not delegate the performance of Services to other members of Consultant's organization or to Subcontractors without City's prior written consent. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Services and may not be removed from the Project without the City's prior written approval. City may consider Consultant in default of this Agreement if any member of the Project Team is prevented from providing Services without City's prior written approval. Consultant must consult City as to any replacement if any member of the Project Team becomes unavailable. City may terminate this Agreement if City does not approve of a proposed replacement. Further, City reserves the right, after consultation with Consultant, to require any of Consultant's employees or agents to be removed from providing Services under this Agreement.

**5.5 Consultant Evaluation.** City will evaluate Consultant's performance using the Consultant Evaluation Form.

## VI. CONTRACT DOCUMENTS

**6.1 Contract Documents.** This Agreement and its exhibits constitute the Contract Documents. The Contract Documents completely describes the Services to be provided. The exhibits are as follows:

- Exhibit A - Scope of Services
- Exhibit B - Compensation and Fee Schedule
- Exhibit C - Time Schedule
- Exhibit D - City's General Terms and Provisions

**6.2 Submittals Required with the Agreement.** Consultant is required to submit the following forms and information before the Agreement is executed:

- Contractor Standards Pledge of Compliance
- Work Force Report
- Contract Activity Report
- Consultant Past Participation List
- Equal Benefits Ordinance Certification of Compliance

**6.3 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by City and Consultant acting by and through their authorized officers.

OCEAN IMAGING, INC.

CITY OF SAN DIEGO,  
A Municipal Corporation

BY: \_\_\_\_\_

*Jan Svejksky*  
Dr. Jan Svejksky  
President

BY: \_\_\_\_\_

Dennis Gakunga  
Director  
Purchasing & Contracting Department

*22 May 2015*

DATE SIGNED

DATE SIGNED

Approved as to form this \_\_\_ day of \_\_\_\_\_, 20\_\_.

JAN I. GOLDSMITH, City Attorney

BY: \_\_\_\_\_

Deputy City Attorney

## SCOPE OF SERVICES

### A. PROJECT OVERVIEW

Ocean Imaging Corporation (OI) specializes in marine and coastal remote sensing for research and operational applications. In the 1990s, OI received multiple research grants from NASA's Commercial Remote Sensing Program for the development and commercialization of novel remote sensing applications in the coastal zone. As part of these projects, OI developed methods to utilize various types of remotely sensed data for the detection and monitoring of stormwater runoff and wastewater discharges from offshore ocean outfalls. The methodology was initially demonstrated with collaboration of the Orange County Sanitation District. The NASA-supported research and demonstration led to a proof-of-concept demo project in the San Diego region co-funded by the U.S. EPA in 2000. Those results led, in turn, to adding an operational remote imaging-based monitoring component to the San Diego region's established water quality monitoring programs for the South Bay Ocean Outfall (SBOO) and Point Loma Ocean Outfall (PLOO), as stipulated in NPDES discharge permits for the South Bay International Wastewater Treatment Plant and Point Loma Wastewater Treatment Plant, respectively. The project was initially spearheaded by the San Diego Regional Water Quality Control Board (SDRWQCB), EPA Region 9, but is jointly funded today by the City of San Diego Public Utilities Department (City) and the U.S. Section of the International Boundary and Water Commission (IBWC).

The first phase of the project was a historical study utilizing satellite data acquired between the early 1980s and 2002. This study established, among other findings, the prevailing near-surface ocean current patterns in the region under various oceanic and atmospheric conditions. The current directions were deduced from patterns of turbidity, ocean temperature and surfactant slicks. In some cases, near-surface current velocity could be computed by tracking recognizable color or thermal features in time-sequential images. The historical study thus established a baseline data base for the region's current patterns, their persistence and frequency of occurrence, and the historical locations, size and dispersion trajectories of various land and offshore discharge sources (e.g. the offshore outfalls, Tijuana River, Punta Bandera Treatment Plant discharge in Mexico, etc.).

In October, 2002 the operational monitoring phase of the project was initiated. This work initially utilized 500m resolution Moderate Resolution Imaging Spectroradiometer (MODIS) color satellite imagery, 27m & 60m Thematic Mapper (TM5 & TM7) color and thermal satellite imagery, and regular aerial imaging overflights of selected sub-areas over the PLOO and SBOO monitoring regions with OI's aerial multispectral sensor. Whenever possible, the flights were coordinated with the City's regular offshore ocean sampling schedule so that the imagery was collected on the same day (usually within 2-3 hours) of the field data collection. Additional flights were conducted on an on-call basis immediately after major storms or other events such as sewage spills.

Four important new image data sources have been added to the project since late 2010:

- 1) In response to an increasing emphasis on meso- and larger-scale monitoring to better understand the regional processes and variability, OI added a variety of satellite-derived products that include Sea Surface Temperature (SST), chlorophyll concentrations, ocean currents and other products on a regional scale.
- 2) OI also negotiated a special pricing contract with Germany's RapidEye which operates a constellation of multispectral very high resolution (5m) satellites. Under this agreement, RapidEye collects imagery of the entire coastal region from La Jolla to past Los Buenos Creek in Mexico on a predetermined frequency schedule and charges OI a fixed, per-acquisition fee rather than the traditional (much higher) per-km fees normally charged by very high resolution satellite operators. The RapidEye data provide a much more comprehensive view of point and non-point discharge signatures in the region, as well as turbidity, plankton bloom and kelp canopy signatures over one contiguous area that was not financially and temporally possible with OI's aerial system.
- 3) In 2012 -2013, OI integrated the satellite and aerial data with the City's "BioMap" web-based GIS application, which allows authorized persons access to the system to synthesize and explore large volumes of data dynamically via a web browser interface, in ways not possible in the past.
- 4) As part of continuing expansion of data products available to the City, OI also added HF radar-based surface current fields employing an interactive "time-slider" control, and a suite of multi-depth oceanographic variable products derived from the HYCOM model, and added image acquisition and processing from the newly launched Landsat-8 satellite

**B. PROJECT REQUIREMENTS AND TASKS**

**Contractor shall provide the following services:**

- 1) Continue data acquisition, processing and analysis as established from satellite and non-satellite sources and their inclusion in City's BioMap application.
- 2) Provide regularly throughout the year the most effective raw, processed and/or derived data products with rapid turnaround times.
- 3) Continue inclusion of enhancements and new services such as the planned addition of products from NOAA's Monthly Climatology MODIS CDOM data, moored arrays, and development of new products/data layers that combine multiple data types for more comprehensive interpretation.
- 4) Continue multi-source satellite and aerial imaging of the San Diego to Mexico coastal border region to provide synoptic views of typical surface water conditions and insight into anomalous conditions whenever possible.
- 5) Continue analysis and correlation studies of remote sensing imagery with field data provided by the City and others (e.g. San Diego County Department of Environmental Health). This includes maintaining data acquisition contract with RapidEye or a similar alternate high resolution satellite data source.
- 6) Continue maintaining integration of OI's ArcGIS Server with the City's BioMap server to provide near-real-time data products from the various satellites HF Radar-derived

## EXHIBIT A

current fields, and modeling products such as the Hycorn modeled current fields and mixed layer depth and salinity.

- 7) Continue providing the City with an annual summary report, and any custom-processed images or other GIS/graphic material as requested.
- 8) Data products will be reviewed on a regular basis and additional products that become available (e.g. satellite-derived salinity or higher-resolution thermal imagery) may also be added as per periodic discussions between the City staff and OI. Such discussions will be scheduled to occur at least once a year in order to develop detailed annual work plans.

### **Optional Services**

These services may be added to the annual work plans during the next five years at the discretion of the City and if mutually agreeable with OI. The detailed purpose, scope, methods, and any additional costs associated with such studies or any resource exchanges of core services will be negotiated between OI and the City project manager prior to their inclusion in each year's work plan and/or budget modification. Examples of such services include, but are not be limited to:

- 9) Specialized extra support of special field studies, such as:
  - a. SCCWRP-organized Southern California Bight regional monitoring characterization or comparison studies
  - b. Aerial/ship coordinated plume dispersion studies (e.g. wastewater plumes, sediment plumes, HABs) studies
- 10) Investigative response to sewage spills or storm water runoff events.
- 11) Other specific data collection and/or analysis not related to the project's core services. Examples may include, but are not limited to:
  - a. Researching the utility of imagery products as covariates for various models or algorithms;
  - b. Long-term, high frequency regional kelp bed canopy distribution analysis related to on-going sea urchin studies by SIO and UCSB;
  - c. Processing and classification of seafloor substrates using multispectral imagery merged with USGS Lidar bathymetry;
  - d. Spill event investigations, researching new data analysis methods, or involvement in other special projects as deemed necessary in support of the the City' Ocean Monitoring Program.

### **C. ROLES AND RESPONSIBILITIES**

**Contractor's General Roles and Responsibilities include the following deliverables schedule:**

## EXHIBIT A

- 1) Digital Imagery Files: Digital files of the various types of satellite imagery acquired for the project (e.g. MODIS, AVHRR, RapidEye, TM) will be posted regularly on the OI website and made accessible via a secure login created specifically for City staff. These posting will be reviewed by the City project manager on a monthly basis.
- 2) Annual Summary Reports: Annual summary reports shall be produced within 120 days after completion of work for CY 2015 – CY 2019. Thus, the approximate date of completion for these draft reports will be April 30<sup>th</sup> of each year from 2016-2020. These reports should follow a format similar in scope and content to the CY 2013 report.
- 3) Long-Term Assessment Journal Article: A scientific paper based on a long-term retrospective report to be prepared during CY 2015, and covering the results and findings from the beginning of the project through CY 2014, shall be prepared and submitted for peer reviewed publication in an established science journal during CY 2016. This paper will be a collaborative and co-authored paper between OI and City scientists that will focus on the remote sensing of the region's offshore ocean outfalls and surrounding waters. This paper will complement a previous publication by OI in the journal *Estuarine, Coastal and Shelf Science* that focused on effluent discharge trends associated with outflows from the Tijuana River.

# COMPENSATION AND FEE SCHEDULE

## Coastal Remote Sensing of the San Diego/Tijuana Region

### Proposed Annual Budget

Year 1: 7/1/2015-6/30/2016

<u>Position Classification</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
J. Svejkovsky, Principal Investigator	160	\$87.68	\$14,029
M. Hess, Project Manager	440	\$87.68	\$38,579
GIS Analyst III	1040	\$63.86	\$66,414
GIS Analyst II	640	\$58.06	\$37,158
<b><u>Materials &amp; Supplies</u></b>			
Computer media and related supplies			\$500
<b>Reports</b>			
Provision of Special Report and Manuscript Publication			\$5,000
<b>Commercial RS Data Purchases</b>			
RapidEye Data @ \$2100/acquisition (20 per year)			\$42,000
MODIS NASA Stream Download			\$4,771
Overhead data only 14%			\$6,548
<b>Total</b>			<b>\$215,000</b>

### NOTE:

A request for an annual rate adjustment must be submitted to the City of San Diego in writing for approval. Written justification for the rate adjustment must be submitted to the City of San Diego a minimum of 60 days before the Agreement anniversary date. Said proposed adjustment shall not exceed three percent (3%), and the City of San Diego must approve any rate adjustments in writing before they become effective.

**TIME SCHEDULE**

Digital Imagery Files (Approximately 20 per year)	On a monthly basis from July 1, 2015 to June 30, 2020
Annual Summary Report Year 1	April 30, 2016
Annual Summary Report Year 2	April 30, 2017
Annual Summary Report Year 3	April 30, 2018
Annual Summary Report Year 4	April 30, 2019
Annual Summary Report Year 5	April 30, 2020
Long Term Retrospective Report	Draft report for review December 31, 2015
Final Retrospective Report	March 30, 2016
Long Term Assessment peer reviewed Journal Article	Published by December 31, 2016

**EXHIBIT D**

**EXHIBIT D  
CITY'S GENERAL TERMS AND PROVISIONS**



---

**THE CITY OF SAN DIEGO**  
**GENERAL CONTRACT TERMS AND PROVISIONS**  
**APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS**

**ARTICLE I**  
**SCOPE AND TERM OF CONTRACT**

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

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

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

**ARTICLE II**  
**CONTRACT ADMINISTRATOR**

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

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

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

## ARTICLE III COMPENSATION

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

### **3.2 Invoices.**

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

**3.2.2 Service Contracts.** Contractor must submit invoices for services to City by the 10<sup>th</sup> of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

**3.2.3 Goods Contracts.** Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

**3.2.4 Parts Contracts.** Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

**3.2.5 Extraordinary Work.** City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

**3.2.6 Reporting Requirements.** Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

**3.2.6.1 Monthly Employment Utilization Reports.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.2.6.2 Monthly Invoicing and Payments.** Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5<sup>th</sup>) day of the subsequent month.

**3.3 Annual Appropriation of Funds.** Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

**3.4 Price Adjustments.** Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

#### **ARTICLE IV SUSPENSION AND TERMINATION**

**4.1 City's Right to Suspend for Convenience.** City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and conditions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

**4.2 City's Right to Terminate for Convenience.** City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or

received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

**4.3 City's Right to Terminate for Default.** Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

**4.3.1** If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

**4.3.2** If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

**4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors.** If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

**4.5 Contractor's Right to Payment Following Contract Termination.**

**4.5.1 Termination for Convenience.** If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

**4.5.2 Termination for Default.** If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

**4.6 Remedies Cumulative.** City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

**ARTICLE V**  
**ADDITIONAL CONTRACTOR OBLIGATIONS**

**5.1 Inspection and Acceptance.** The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

**5.2 Responsibility for Lost or Damaged Shipments.** Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

**5.3 Responsibility for Damages.** Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

**5.4 Delivery.** Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

**5.5 Delay.** Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

**5.5.1** If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

**5.6 Restrictions and Regulations Requiring Contract Modification.** Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or

services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

**5.7 Warranties.** All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

**5.8 Industry Standards.** Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

**5.9 Records Retention and Examination.** Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

**5.9.1** Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint

venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

**5.10 Quality Assurance Meetings.** Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

**5.11 Duty to Cooperate with Auditor.** The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

**5.12 Material Safety Data Sheets.** If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Material Safety Data Sheet for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

**5.13 Project Personnel.** Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

**5.13.1 Criminal Background Certification.** Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

**5.13.2 Photo Identification Badge.** Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

**5.14 Standards of Conduct.** Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

**5.14.1 Supervision.** Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

**5.14.2 City Premises.** Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

**5.14.3 Removal of Employees.** City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

**5.15 Licenses and Permits.** Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

**5.16 Contractor and Subcontractor Registration Requirements.** Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

## ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

**6.1 Rights in Data.** If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

**6.2 Intellectual Property Rights Assignment.** For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or

other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

**6.3 Contractor Works.** Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

**6.4 Subcontracting.** In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a "works for hire" as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

**6.5 Intellectual Property Warranty and Indemnification.** Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

**6.6 Software Licensing.** Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

**6.7 Publication.** Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

**6.8 Royalties, Licenses, and Patents.** Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

## ARTICLE VII

### ~~INDEMNIFICATION AND INSURANCE~~

**7.1 Indemnification.** To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

**7.2 Insurance.** Contractor shall not begin any performance under this Contract until it has (1) provided City insurance certificates and endorsements reflecting evidence of all insurance and endorsements required and described herein and in the Specifications; (2) obtained City approval of each insurance company or companies; and (3) confirmed that all policies contain the special

provisions required herein and the Specifications. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Contract, shall not be deemed limited in any way to the insurance coverage required herein or in the Specifications. Maintenance of specified insurance coverage is a material element of this Contract, and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract may be treated by City as a material breach of contract. City reserves the right to require Contractor to submit copies of any policy upon reasonable request by City. All policies shall include, and the insurance certificates shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

Contractor shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Contract.

Contractor shall maintain insurance coverage at its own expense as follows:

**7.2.1 Commercial General Liability.** Commercial General Liability (CGL) insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury, advertising injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**7.2.2 Commercial Automobile Liability.** For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. The insurance certificate shall reflect coverage for any automobile (any auto).

**7.2.3 Workers' Compensation.** For all of Contractor's employees who are subject to this Contract and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and Contractor shall provide an endorsement that the insurer waives the right of subrogation against City and its respective elected officials, officers, employees, agents, and representatives.

**7.2.4 Professional Liability.** For consultant contracts, Contractor shall obtain Professional Liability coverage with limits of at least \$1 million per occurrence and \$2 million aggregate, covering the risk of errors and omissions, negligent acts and costs of claims/litigation, including investigation and court costs. If the coverage is written on a "claims-made" form, Contractor must ensure that the policy retroactive date is before the date of the contract is awarded, that coverage is maintained during the duration of performance of the contract or the contract period (whichever is longer) and the policy has a reporting period or run-off provision

of at least three (3) years following completion or termination of the performance of professional services under this Contract.

**7.3 Deductibles.** All deductibles or retentions on any policy shall be the sole responsibility of Contractor and shall be disclosed to City at the time the evidence of insurance is provided.

**7.4 Acceptability of Insurers.** Except for the State Compensation Insurance Fund, all insurance required by this Contract, shall only be carried by insurance companies with a current rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

**7.5 Required Endorsements.** The following endorsements to the policies of insurance are required to be provided to City before any performance is initiated under this Contract.

**7.5.1 Commercial General Liability Insurance Endorsements.**

**Additional Insured.** To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an insured City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

**Primary and Non-contributory Coverage.** The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

**Severability of Interest.** The policy or policies must be endorsed to provide 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 and shall provide cross-liability coverage.

### 7.5.2 Automobile Liability Insurance Endorsements

**Additional Insured.** To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Insured City and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor.

**Primary and Non-contributory Coverage.** The policy or policies must be endorsed to provide that the insurance afforded by the Automobile Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

**Severability of Interest.** The policy or policies must be endorsed to provide 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 and shall provide cross-liability coverage.

### 7.5.3 Worker's Compensation Insurance Endorsements.

**Waiver of Subrogation.** The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against City, its elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for City.

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

**7.7 Additional Insurance.** Contractor may obtain additional insurance not required by this Contract.

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

## ARTICLE VIII BONDS

**8.1 Payment and Performance Bond.** Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

**8.1.1 Bond Amount.** The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and conditions of the Contract.

**8.1.2 Bond Term.** The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

**8.1.3 Bond Surety.** The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

**8.1.4 Non-Renewal or Cancellation.** The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

**8.2 Alternate Security.** City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

## **ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS**

**9.1 Contractor Certification of Compliance.** By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

**9.1.1 Drug-Free Workplace Certification.** Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

**9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations:** Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy

100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

### **9.1.3 Non-Discrimination Requirements.**

**9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP).** Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

**9.1.3.2 Non-Discrimination Ordinance.** Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

**9.1.3.3 Compliance Investigations.** Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.4 Equal Benefits Ordinance Certification.** Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

**9.1.5 Contractor Standards.** Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**9.1.6 Noise Abatement.** Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

**9.1.7 Storm Water Pollution Prevention Program.** Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

**9.1.8 Service Worker Retention Ordinance.** If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

**9.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

**9.1.10 Business Tax Certificate.** Any company doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

## ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

**10.1 Conflict of Interest Laws.** Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

**10.2 Contractor's Responsibility for Employees and Agents.** Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

**10.3 Contractor's Financial or Organizational Interests.** In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom

Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

**10.4 Certification of Non-Collusion.** Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

**10.5 Hiring City Employees.** This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

## **ARTICLE XI DISPUTE RESOLUTION**

**11.1 Mediation.** If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

**11.2 Selection of Mediator.** A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

**11.3 Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

**11.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

**11.5 Mediation Results.** Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

## ARTICLE XII MANDATORY ASSISTANCE

**12.1 Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

**12.2 Compensation for Mandatory Assistance.** City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

**12.3 Attorneys' Fees Related to Mandatory Assistance.** In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

## ARTICLE XIII MISCELLANEOUS

**13.1 Headings.** All headings are for convenience only and shall not affect the interpretation of this Contract.

**13.2 Non-Assignment.** Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

**13.3 Independent Contractors.** Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

**13.4 Subcontractors.** All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

**13.5 Covenants and Conditions.** All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

**13.6 Compliance with Controlling Law.** Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

**13.7 Governing Law.** The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

**13.8 Venue.** The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

**13.9 Successors in Interest.** This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

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

**13.11 Severability.** The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

**13.12 Drafting Ambiguities.** The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

**13.13 Amendments.** Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect.

**13.14 Conflicts Between Terms.** If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

**13.15 Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

**13.16 Confidentiality of Services.** All services performed by Contractor, and any subcontractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

**13.17 Insolvency.** If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

**13.18 No Third Party Beneficiaries.** Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

**13.19 Actions of City in its Governmental Capacity.** Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

3559  
**RECEIVED**  
 MAY 12 2015  
 Pd  
 Purchasing & Contracting Department  
 City of San Diego

Purchasing and Contracting Department  
 City of San Diego

**REQUEST AND CERTIFICATION FOR SOLE SOURCE PROCUREMENT**

To: Purchasing and Contracting Director or Designee

From:	Malko Kasuya	Marine Biologist II	Public Utilities
	Name	Title	Department

Date: April 22, 2015

1. Describe goods or service(s) to be purchased. Include vendor's cost, City stock number if applicable, name, and telephone number:  
 Satellite and aerial coastal water quality monitoring (Remote Sensing) services to be provided by Ocean Imaging, Inc. (Contact: Dr. Jan Svejksky; 858-792-8529) at a cost of \$1,166,000 over five years (FY 2016 - FY 2020) in order to continue meeting the City's regulatory and contractual obligations for the Point Loma and South Bay Ocean Outfall regions. This sole source procurement was approved in FY15 (sole source #3408). Please see the attached copy of the approved sole source procurement.

2. Explain why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would, therefore, be undesirable, impractical, or impossible:  
 The remote sensing services provided by Ocean Imaging are critical to the Public Utilities Department being able to meet its environmental monitoring objectives and regulatory permit requirements associated with the discharge of wastewater to the Pacific Ocean from the Point Loma Wastewater Treatment Plant (PLWTP) and South Bay Water Reclamation Plant via the Point Loma and South Bay ocean outfalls, respectively. This work is also part of a multi-year contractual agreement the City has with the International Boundary and Water Commission, U.S. Section (USIBWC) to provide ocean monitoring services for the South Bay outfall region associated with operation of the International Wastewater Treatment Plant, for which the City is reimbursed by the USIBWC at total of about \$1M/year. The project also represents a long-term collaboration between the City and USIBWC that was initiated by the San Diego Regional Water Quality Control Board (RWQCB) in 2002. Ocean Imaging was selected by the RWQCB as the contractor for the City and USIBWC must utilize to ensure that satellite and aerial image acquisition, processing and analysis would remain consistent and continuity of the resultant remote sensing data would be maintained. Consequently, Ocean Imaging's existing remote sensing data archive compiled over the past 13 years, and customized analysis results linking the historical satellite and aerial imagery data, field sampling, and environmental/oceanographic parameters have become essential to the City's evaluation of coastal water quality trends off San Diego. No other organization has such a dataset or the ability and reputation to reliably perform these services. Additionally, the City and Ocean Imaging are in the midst of collaborating on the publication of the results of this long-term program, which was included as an essential component of the City's recent application for a renewed 301(h) modified permit [Waiver] for the PLWTP. Since no other single organization can provide these unique datasets, specialized

Sole Source Request and Certification  
 Effective: October 13, 2014  
 OCA Document No. 881681

analytical services, and level of remote sensing expertise, the City of San Diego will not benefit economically from a competitive process.

3. This sole source procurement is necessary because:

- Goods are available from only one source
- The requested goods are replacement parts or components for existing City equipment or required by warranty and/or insurance coverage
- The contract is necessary for the reasons explained in San Diego Municipal Code (SDMC) section 22.3208(c) (explain) The highly technical and uniquely tailored and customized services Ocean Imaging provides are unavailable through any other single source (please see above for details).
- Other (describe) Click here to enter text.

4. Goods and services evaluated (add additional pages, if needed):

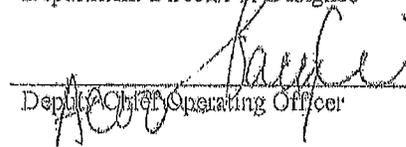
A.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status
B.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status
C.	<u>Click here to enter text.</u> Good/Service	<u>Click here to enter text.</u> Name of Vendor	<u>Click here to enter text.</u> Bid Amount
	<u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> SLBE Status

REVIEWED:

  
Department Director of Designee

4/28/15  
Date

APPROVED:

  
Deputy Chief Operating Officer

5/5/15  
Date

Sole Source Request and Certification  
Effective: October 13, 2014  
OCA Document No. 881681

DENIED:

Deputy Chief Operating Officer

Date

Reason for denial:

5. Purchasing Department Comments:

*Recommend approval. This sole source is a continuation of a previous sole source. The services provided are for a 5 year period.*

Buyer:

*Buntell*

*5/14/15*

Date

Given the information in your memorandum, I certify that strict compliance with a competitive process would be unavailing or would not produce an advantage, and that soliciting bids or proposals would therefore be undesirable, impracticable, or impossible. My approval is valid for one (1) year from the signature date below. The requesting department must submit a purchase requisition and a copy of this certification to Purchasing and Contracting in order for a Purchase Order to be issued.

APPROVED:

*[Signature]*

Purchasing Director/Designee under SDMC §22.3016

*5/15/15*

Date

DENIED:

Purchasing Director/Designee under SDMC §22.3016

Date

Reason(s) for denial: