

1E
7/18/13

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
TECHNICAL SERVICES CONTRACTOR**

THIS AGREEMENT is made and entered into effective the 31st day of May, 2013, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and ADS CORP, a Division of ADS LLC, a limited liability corporation (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, CITY desires to obtain technical services for the ongoing maintenance services for ADS flow monitoring and related equipment, hereinafter referred to as the "Project;" and

WHEREAS, CONTRACTOR is engaged in the business of furnishing services as a technical flow meter maintenance service and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, since the mid-1980s CONTRACTOR has supplied 21 flow monitors to CITY and provided comprehensive maintenance service for the monitors; and

WHEREAS, ADS flow monitoring equipment and software is proprietary and CONTRACTOR has the knowledge and experience for routine and non-routine maintenance of the equipment, including use of authorized parts; and

WHEREAS, CONTRACTOR has knowledge and experience of the CITY collection system environment where the meters are located and is familiar with issues impacting meters resulting in efficient maintenance of the meters; and

WHEREAS, CONTRACTOR acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 3-3; and

WHEREAS, this Agreement will be administered for CITY by its Director of Public Utilities (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. CONTRACTOR shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A** .

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through December 31, 2015 and subject to any earlier termination in accordance with this Agreement. This Agreement may be extended, with the mutual consent of CITY and CONTRACTOR for two consecutive one-year periods with price increases/decreases according to negotiated prices. The services of CONTRACTOR as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) CONTRACTOR'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed \$188,164.79, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered quarterly for services performed in the preceding quarter and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONTRACTOR'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONTRACTOR shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to CONTRACTOR upon the earlier of: (i) CONTRACTOR'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONTRACTOR; (ii) 7 calendar days prior written notice with or without cause by CITY to CONTRACTOR; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONTRACTOR shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONTRACTOR that are owned by CITY. Subject to the terms of this Agreement, CONTRACTOR shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONTRACTOR shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONTRACTOR to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONTRACTOR, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CONTRACTOR, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONTRACTOR shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event CONTRACTOR fails to comply with any terms or conditions of this Agreement.

(f) CONTRACTOR shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONTRACTOR and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine, restrictions, strikes, unusually severe weather, and delays of common carriers. CONTRACTOR shall notify Administrator in writing as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by CONTRACTOR pursuant to this Agreement shall not be made available to any individual or organization by CONTRACTOR without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, CONTRACTOR shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all writings and documents prepared or provided by CONTRACTOR pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CONTRACTOR shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If CONTRACTOR should subcontract all or any portion of the services to be performed under this Agreement, CONTRACTOR shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement

6. Technical Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONTRACTOR represents to CITY that CONTRACTOR and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONTRACTOR and any subcontractors to do and perform such services in a skillful manner and CONTRACTOR agrees to thus perform the

services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONTRACTOR or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONTRACTOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that to the extent such arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONTRACTOR, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONTRACTOR should subcontract all or any portion of the services to be performed under the Agreement, CONTRACTOR shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONTRACTOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, its principals, officers, agents, employees, persons under the supervision of CONTRACTOR, vendors, suppliers, invitees, CONTRACTORS, sub-CONTRACTORS, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of CITY, CONTRACTOR shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If CONTRACTOR should subcontract all or any portion of the services to be performed under this Agreement, CONTRACTOR shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONTRACTOR and CITY prior to the commencement of any services by the subcontractor.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONTRACTOR shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONTRACTOR shall have the obligation and duty to immediately notify CITY of any change to the information provided by CONTRACTOR in such statement.

(b) CONTRACTOR shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CONTRACTOR shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONTRACTOR and the respective subcontractor(s) are in full compliance with all laws and regulations. CONTRACTOR shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONTRACTOR shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONTRACTOR shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONTRACTOR represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONTRACTOR, nor any of CONTRACTOR'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing.

CONTRACTOR and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, CONTRACTOR shall remain responsible for complying with Section 9(b), above.

(f) If CONTRACTOR should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONTRACTOR shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event CONTRACTOR maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONTRACTOR at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit of each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.

(b) Records of CONTRACTOR'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONTRACTOR pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONTRACTOR should subcontract all or any portion of the services to be performed under this Agreement, CONTRACTOR shall cause each subcontractor

to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONTRACTOR shall have provided evidence to CITY that CONTRACTOR is licensed to perform the services called for by this Agreement (or that no license is required). If CONTRACTOR should subcontract all or any portion of the work or services to be performed under this Agreement, CONTRACTOR shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONTRACTOR shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONTRACTOR agrees as follows:

(a) CONTRACTOR will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONTRACTOR shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONTRACTOR'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONTRACTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONTRACTOR'S commitment under

this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If CONTRACTOR should subcontract all or any portion of the services to be performed under this Agreement, CONTRACTOR shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONTRACTOR is acting solely as an independent contractor. Neither CONTRACTOR, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venture, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

(b) Because of its status as an independent contractor, CONTRACTOR and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONTRACTOR shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONTRACTOR shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONTRACTOR'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to CONTRACTOR and there shall be no assignment by CONTRACTOR of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by CONTRACTOR, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONTRACTOR hereby agrees not to assign the payment of any monies due CONTRACTOR from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONTRACTOR directly to CONTRACTOR.

17. Compliance With Law. In providing the services required under this Agreement, CONTRACTOR shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding

or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONTRACTOR.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: *Patrick Wiemiller*
PATRICK WIEMILLER
Director
Department of Public Utilities

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: *Sherrie L. Badertoch*
Deputy
7/19/13

APPROVED AS TO FORM:
City Attorney's Office

By: *Jacey Parvaman* 5-21-13
[Name] Date
Senior Deputy/Deputy City Attorney

ADS CORP, a Division of ADS LLC a
Limited Liability Corporation

By: *Harold Kimbrough*
Name: Harold R. Kimbrough

Title: Vice President
(if corporation or LLC, Board Chair,
Pres. or Vice Pres.)

By: *Joe Goustin*
Name: Joe Goustin

Title: Treasurer
(if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

Any Applicable Professional License:
Number: _____
Name: _____
Date of Issuance: _____

Addresses:

CITY: City of Fresno
Attention: Rosa Lau-Staggs,
Chief of Environmental Services
5607 W. Jensen
Fresno, CA 93619
Phone: (559) 621-5130
FAX: (559) 498-1700

CONTRACTOR:
ADS Corp, ADS LLC
Attention: Paul Forsthoefel
West Regional Manager
15205 Springdale St
Huntington Beach, CA 92649
Phone: (206) 512-9178
FAX: (206) 762-5077

Attachments:

- 1. Exhibit A -Scope of Services
- 2. Exhibit B -Insurance Requirements
- 3. Exhibit C -Conflict of Interest Disclosure Form

Exhibit A
Scope of Contractor Services.
Agreement between City of Fresno and ADS Corp (ADS)

Sewer Flow Monitoring Maintenance for the City of Fresno
May 2013-December 2015

Section I. Quarterly Service

ADS shall perform the following maintenance and/or repair services on equipment installed at the locations listed in Attachment B, entitled "Equipment Schedule", attached hereto and by this reference incorporated as part of this Proposal. The services shall include provision for all labor, parts, field equipment, traffic control equipment, and confined space equipment.

ADS shall maintain an office within the State of California, to provide appropriate maintenance and repair services. The facility shall be appropriately staffed with full time employees of ADS. The facility shall be equipped with all necessary test equipment, repair equipment, and spare parts required. ADS is not responsible for service or repairs for central computer, peripherals and other related equipment not originally provided by ADS.

ADS shall designate a representative who shall be the primary contact with the City of Fresno for the resolution of field problems. Written notification of any change in this primary contact will be provided to the City of Fresno.

The flow monitor maintenance and repair services to be provided by ADS shall include:

A. Equipment Repair and Maintenance Services:

ADS on a scheduled quarterly basis will perform repair and maintenance services necessary to keep the equipment operating in accordance with manufacturer's design specifications. These services will be performed as required both in the field and from ADS service facilities in California, or other service locations. The services to be performed under this agreement include but are not limited to the following:

- a. General equipment maintenance including sensor cleaning and battery replacement;
- b. Batteries shall be replaced when their voltages register 'critical' on the diagnostic evaluation. ADS shall replace the batteries within the scheduled quarterly service schedule plan;
- c. The following items will only be conducted by ADS under the normal Quarterly service plan or, alternatively, upon the express authorization of the City of Fresno if repairs are needed to be made to the ADS 3500 series meters as detailed in Section F. "exclusions".
 - i. Repair of electronic failure internal to the equipment;
 - ii. Repair of communication link failure internal to the equipment;

- iii. Depth sensor replacement. A depth sensor shall be replaced if, after cleaning, the sensor has less than two (2) operating ultrasonic crystals or less than two (2) reporting sensor pairs;
- iv. Velocity sensor replacement. A velocity sensor shall be replaced if it malfunctions;
- v. Pressure sensor replacement. A pressure sensor shall be replaced if it malfunctions;
- vi. Repair or replacement of circuit boards, internal electronics, connectors, wiring, chassis, canister, and miscellaneous items as required;
- vii. FlowShark AL or Triton equipment replacement. The meter and associated sensors and communication modules will be replaced in the event of malfunction.

The field service shall accommodate the City of Fresno's normal operating hours of 8:00 A.M. to 4:45 P.M. Monday through Thursday, Pacific Standard Time, or provide written notification if after hours work is required. ADS shall provide an email which will document all maintenance and diagnostics performed. No non-emergency work shall be done on State and Federal Holidays.

B. Confirmations:

ADS shall conduct a site visit to each telemetered Sanitary sewer open channel flow monitoring site indicated in Attachment B, "Equipment Schedule," to perform an in-situ hydraulic confirmation and a physical confirmation of the sensor readings once annually, at a minimum. This site visit shall include a site inspection of all ADS supplied field equipment and a manual measurement of the pipe diameter and depth. Measurements of depth shall be cross-checked with the depth sensors and confirmations shall be made that the sensors are correctly reading and recording the actual depth. Additionally, a check shall be made for the presence of any siltation. If any silt is present, the depth of the silt shall be measured and recorded. Any significant variations in the measured parameters shall be reported to the designated City data analyst.

Traffic Control:

Traffic control shall be as specified in ADS Safety Manual and as indicated on the site reports. ADS shall follow the California WATCH Manual when conducting traffic control.

C. Confined Space Entry:

ADS shall use trained 2-person field crews, unless specific site conditions require a 3-person crew, with appropriated equipment and vehicles to perform confined space entries during the term of this Agreement consistent with CAL-OSHA requirements for confined space entry.

D. System Performance:

Under this Scope of Work, ADS **shall not guarantee** overall Sanitary sewer system-wide up-time during maintenance and repair period of 95%. ADS will only conduct equipment maintenance and repairs during the scheduled quarterly service or in the event of a sensor malfunction within forty-five (45) days of last scheduled quarterly visit (sensor scrubs excluded).

E. Exclusions:

The following equipment and services shall be excluded from the Quarterly maintenance and repair service agreement:

- a. Repair of obsolete 3500 meters that ADS field crews are unable to repair in the field, due to the degree of corrosion or apparent internal malfunction. If this occurs, the City of Fresno will have the option of paying ADS a \$1,500 additional mobilization service charge (in addition to the quarterly service fee per meter), to repair and reinstall the meter within two (2) weeks of the quarterly service visit. ADS will contact the City of Fresno to communicate if the meter is repairable and to determine whether or not the City wishes to exercise this option. If the City of Fresno chooses not to pay for the expedited meter repair, the non-functional meter will be repaired and replaced during the next quarterly maintenance for no additional charge as long as needed parts are still available.
- b. Repair of phone lines from the monitor to the service connection;
- c. Communication and electrical lines external to the equipment;
- d. Changes or alterations in specifications;
- e. Painting, refinishing, or furnishing materials;
- f. Installation, moving, or removing of equipment unless required as part of the repair process;
- g. Repairs made necessary by action of the City of Fresno, its employees, agents, contractors or invitees;
- h. Repairs made necessary due to attempts by the City of Fresno to repair or maintain ADS equipment unless authorized by ADS;
- i. Maintenance and repairs to equipment not specifically identified in Attachment B, "Equipment Schedule";
- j. Service during holidays or weekends, or service not covered by this Agreement. Holidays are defined as New Year's Day, Martin Luther King Day, Presidents Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and the day after, and Christmas Day;
- k. Maintenance and repairs made necessary due to events beyond ADS's control such as, but not limited to, vandalism, construction by others that cut telephone lines, unusually heavy debris that destroys or otherwise disables sensors, or acts of God (e.g., lightning strikes, etc.)

II. City of Fresno Responsibilities

The City of Fresno agrees to perform the following functions and/or make the following acknowledgements in connection with this Agreement. The City of Fresno agrees that certain activities must be performed or acknowledged prior to ADS having any obligation to perform services. If such functions and/or acknowledgements are not made, ADS shall have no obligation to perform the above services at the affected locations.

1. The City of Fresno will not make changes in the equipment or software that would preclude ADS from being able to interface via telephone or wireless internet (depending on the telemetry of the meter installed) with the City of Fresno's equipment unless agreed to by ADS in writing.

2. The City of Fresno will not make repairs or perform maintenance or attempt to do so on the equipment unless authorized by ADS.
3. The City of Fresno will notify ADS of any known equipment malfunctions no less than five (5) business days prior to the next scheduled Quarterly ADS visit either by phone or in writing. This will enable ADS to prepare for the service visit.
4. The City of Fresno will allow ADS to address the system electronically for purposes of running diagnostic tests and performing other pertinent functions. The City of Fresno agrees to have available upon request by ADS any data or monitor information which would assist in the diagnostic procedure.
5. The City of Fresno shall designate a representative to act as liaison between the City of Fresno and ADS representative.
6. The City of Fresno shall provide and maintain dial up telephone telemetry to each site listed in Attachment B, "Equipment Schedule" that has a landline telemetry flow meter installed
7. The City of Fresno will provide landline phone service to each monitoring manhole where the City designates a landline telemetry flow meter be installed.
8. The City of Fresno will communicate with ADS as to their preference for expedited repair of obsolete 3500 meters, in the event that those meters are determined to be unrepairable in the field during the quarterly maintenance visit.

The City of Fresno shall be responsible for the removal of any and or all vegetation, debris or silt that may or does create backups or flow disruptions, which may cause monitor damage or have an effect on data accumulation and accuracy.

EQUIPMENT SCHEDULE

This equipment schedule identifies the unit covered by the agreement between the City of Fresno and ADS.

<u>Site</u>	<u>Location</u>
FR01 (3500)	5518 W. Olive Ave.
FR02 (3500)	Corner of Blythe Ave and W. Herndon Ave.
FR06 (3500)	Corner of W. Ashlan Ave. and N. Fruit Street
FR08 (4000)	Chestnut Ave. @ Annadale Avenue, on the dirt levee road.
FR09 (8000)	(Chestnut and Madison)
FR10 (4500)	3606 N. Fowler Ave.
FR11 (3500)	E. North Ave. Approx. 1.5 mile from S. Chestnut Ave.
FR12 (3500)	Intersection of E. Herndon and W. Willow Ave.
FR13 (4000)	2930 S. Fruit Ave.
FR14 (8000)	(Cherry, south of Edgar)
FR15 (4000)	428 W. California Ave.
FR19 (8000)	(Church, east of Cornelia)
FR20 (4000)	Intersection of South Valentine Ave and W. North Ave.
FR22 (8000)	(Marks and Nielsen)
FR23 (4000)	Intersection of E. Washington & N. Garden Ave.
FR24 (8000)	(Grantland and Jensen)
FR25 (8000)	2398 E. Shaw
FR26 (8000)	3394 Sierra Ave
FR27 (5000)	4023 N Peach Ave

for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year discovery period.

3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONTRACTOR, CONTRACTOR must purchase extended reporting coverage for a minimum of 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONTRACTOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONTRACTOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Manager.

Verification of Coverage

CONTRACTOR shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences.

**Exhibit C
Disclosure of Conflict of Interest**

Sewer Flow Monitoring Maintenance, 19 sites, for the City of Fresno
May 2013-December 2015

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____



 Signature

May 16, 2013

 Date

Joseph J. Goustin

 (name)

ADS LLC

 (company)

15205 Springdale St.

 (address)

Huntington Beach, CA 92649

 (city state zip)

Additional page(s) attached