

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 AGREEMENT

2 **34272**

3 THIS AGREEMENT is made and entered, in duplicate, as of April 5, 2016,
4 for reference purposes only, pursuant to Resolution No. RES-16-0028, adopted by the City
5 Council of the City of Long Beach at its meeting on March 22, 2016, by and between
6 PACIFIC RIM AUTOMATION, INC., a California corporation ("Consultant"), with a place of
7 business at 16611 Burke Lane, Huntington Beach, California 92647, and the CITY OF
8 LONG BEACH ("City"), a municipal corporation.

9 WHEREAS, City requires annual storm drain pump station telemetry,
10 monitoring, system software updates and electrical/control equipment services, and a one-
11 time relocation of equipment and upgrade of system software ("Project"); and

12 WHEREAS, City did by Resolution No. RES-16-0028 determine that the
13 City's need for annual storm drain pump station telemetry, monitoring, system software
14 updates and electrical/control equipment services, and a one-time relocation of equipment
15 and upgrade of system software could only be met by Consultant and, by reason of the
16 foregoing, no useful purpose would be served by advertising for bids and to do so would
17 constitute an idle and useless act and an unnecessary expenditure of public funds; and

18 WHEREAS, City desires to have Consultant perform these specialized
19 services, and Consultant is willing and able to do so on the terms and conditions in this
20 Agreement;

21 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
22 conditions in this Agreement, the parties agree as follows:

23 1. SCOPE OF WORK OR SERVICES.

24 A. Consultant shall sell, furnish and deliver specialized services
25 more particularly described in Exhibit "A", attached to this Agreement and
26 incorporated by this reference, in accordance with the standards of the profession,
27 and City shall pay for these services in the manner described below, not to exceed
28 Six Hundred Ninety-One Thousand One Hundred Ten Dollars (\$691,110), at the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

rates or charges shown in Exhibit "A".

B. The City's obligation to pay the sum stated above for any one fiscal year shall be contingent upon the City Council of the City appropriating the necessary funds for such payment by the City in each fiscal year during the term of this Agreement. For the purposes of this Section, a fiscal year commences on October 1 of the year and continues through September 30 of the following year. In the event that the City Council of the City fails to appropriate the necessary funds for any fiscal year, then, and in that event, the Agreement will terminate at no additional cost or obligation to the City.

C. Consultant may select the time and place of performance for these services; provided, however, that access to City documents, records and the like, if needed by Consultant, shall be available only during City's normal business hours and provided that milestones for performance, if any, are met.

D. Consultant has requested to receive regular payments. City shall pay Consultant in due course of payments following receipt from Consultant and approval by City of invoices showing the services or task performed, the time expended (if billing is hourly), and the name of the Project. Consultant shall certify on the invoices that Consultant has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any Project problems and potential causes of delay in performance, and listing those services that are projected for performance by Consultant during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for Consultant's profession, industry or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.

E. Consultant represents that Consultant has obtained all

1 necessary information on conditions and circumstances that may affect its
2 performance and has conducted site visits, if necessary.

3 F. CAUTION: Consultant shall not begin work until this
4 Agreement has been signed by both parties and until Consultant's evidence of
5 insurance has been delivered to and approved by City.

6 2. TERM. The term of this Agreement shall commence at midnight on
7 May 1, 2016, and shall terminate at 11:59 p.m. on April 30, 2020, unless sooner terminated
8 as provided in this Agreement, or unless the services or the Project is completed sooner.

9 3. COORDINATION AND ORGANIZATION.

10 A. Consultant shall coordinate its performance with City's
11 representative, if any, named in Exhibit "B", attached to this Agreement and
12 incorporated by this reference. Consultant shall advise and inform City's
13 representative of the work in progress on the Project in sufficient detail so as to
14 assist City's representative in making presentations and in holding meetings on the
15 Project. City shall furnish to Consultant information or materials, if any, described
16 in Exhibit "C", attached to this Agreement and incorporated by this reference, and
17 shall perform any other tasks described in the Exhibit.

18 B. The parties acknowledge that a substantial inducement to City
19 for entering this Agreement was and is the reputation and skill of Consultant's key
20 employee, Martin H. Miller. City shall have the right to approve any person proposed
21 by Consultant to replace that key employee.

22 4. INDEPENDENT CONTRACTOR. In performing its services,
23 Consultant is and shall act as an independent contractor and not an employee,
24 representative or agent of City. Consultant shall have control of Consultant's work and the
25 manner in which it is performed. Consultant shall be free to contract for similar services to
26 be performed for others during this Agreement; provided, however, that Consultant acts in
27 accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges
28 and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation;

1 (b) City will not secure workers' compensation or pay unemployment insurance to, for or
2 on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of
3 the usual and customary rights, benefits or privileges of City employees. Consultant
4 expressly warrants that neither Consultant nor any of Consultant's employees or agents
5 shall represent themselves to be employees or agents of City.

6 5. INSURANCE.

7 A. As a condition precedent to the effectiveness of this
8 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
9 duration of this Agreement, from insurance companies that are admitted to write
10 insurance in California and have ratings of or equivalent to A:V by A.M. Best
11 Company or from authorized non-admitted insurance companies subject to Section
12 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
13 by A.M. Best Company, the following insurance:

14 (a) Commercial general liability insurance (equivalent in scope to
15 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
16 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
17 coverage shall include but not be limited to broad form contractual liability,
18 cross liability, independent contractors liability, and products and completed
19 operations liability. City, its boards and commissions, and their officials,
20 employees and agents shall be named as additional insureds by
21 endorsement (on City's endorsement form or on an endorsement equivalent
22 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10
23 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04),
24 and this insurance shall contain no special limitations on the scope of
25 protection given to City, its boards and commissions, and their officials,
26 employees and agents. This policy shall be endorsed to state that the
27 insurer waives its right of subrogation against City, its boards and
28 commissions, and their officials, employees and agents.

1 (b) Workers' Compensation insurance as required by the California
2 Labor Code and employer's liability insurance in an amount not less than
3 \$1,000,000. This policy shall be endorsed to state that the insurer waives
4 its right of subrogation against City, its boards and commissions, and their
5 officials, employees and agents.

6 (c) Professional liability or errors and omissions insurance in an
7 amount not less than \$1,000,000 per claim.

8 (d) Commercial automobile liability insurance (equivalent in scope
9 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an
10 amount not less than \$500,000 combined single limit per accident.

11 B. Any self-insurance program, self-insured retention, or
12 deductible must be separately approved in writing by City's Risk Manager or
13 designee and shall protect City, its officials, employees and agents in the same
14 manner and to the same extent as they would have been protected had the policy
15 or policies not contained retention or deductible provisions.

16 C. Each insurance policy shall be endorsed to state that coverage
17 shall not be reduced, non-renewed or canceled except after thirty (30) days prior
18 written notice to City, shall be primary and not contributing to any other insurance
19 or self-insurance maintained by City, and shall be endorsed to state that coverage
20 maintained by City shall be excess to and shall not contribute to insurance or self-
21 insurance maintained by Consultant. Consultant shall notify City in writing within
22 five (5) days after any insurance has been voided by the insurer or cancelled by the
23 insured.

24 D. If this coverage is written on a "claims made" basis, it must
25 provide for an extended reporting period of not less than one hundred eighty (180)
26 days, commencing on the date this Agreement expires or is terminated, unless
27 Consultant guarantees that Consultant will provide to City evidence of uninterrupted,
28 continuing coverage for a period of not less than three (3) years, commencing on

1 the date this Agreement expires or is terminated.

2 E. Consultant shall require that all subconsultants or contractors
3 that Consultant uses in the performance of these services maintain insurance in
4 compliance with this Section unless otherwise agreed in writing by City's Risk
5 Manager or designee.

6 F. Prior to the start of performance, Consultant shall deliver to City
7 certificates of insurance and the endorsements for approval as to sufficiency and
8 form. In addition, Consultant shall, within thirty (30) days prior to expiration of the
9 insurance, furnish to City certificates of insurance and endorsements evidencing
10 renewal of the insurance. City reserves the right to require complete certified copies
11 of all policies of Consultant and Consultant's subconsultants and contractors, at any
12 time. Consultant shall make available to City's Risk Manager or designee all books,
13 records and other information relating to this insurance, during normal business
14 hours.

15 G. Any modification or waiver of these insurance requirements
16 shall only be made with the approval of City's Risk Manager or designee. Not more
17 frequently than once a year, City's Risk Manager or designee may require that
18 Consultant, Consultant's subconsultants and contractors change the amount, scope
19 or types of coverages required in this Section if, in his or her sole opinion, the
20 amount, scope or types of coverages are not adequate.

21 H. The procuring or existence of insurance shall not be construed
22 or deemed as a limitation on liability relating to Consultant's performance or as full
23 performance of or compliance with the indemnification provisions of this Agreement.

24 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
25 contemplates the personal services of Consultant and Consultant's employees, and the
26 parties acknowledge that a substantial inducement to City for entering this Agreement was
27 and is the professional reputation and competence of Consultant and Consultant's
28 employees. Consultant shall not assign its rights or delegate its duties under this

1 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
2 of City, except that Consultant may with the prior approval of the City Manager of City,
3 assign any moneys due or to become due Consultant under this Agreement. Any
4 attempted assignment or delegation shall be void, and any assignee or delegate shall
5 acquire no right or interest by reason of an attempted assignment or delegation.
6 Furthermore, Consultant shall not subcontract any portion of its performance without the
7 prior approval of the City Manager or designee, or substitute an approved subconsultant
8 or contractor without approval prior to the substitution. Nothing stated in this Section shall
9 prevent Consultant from employing as many employees as Consultant deems necessary
10 for performance of this Agreement.

11 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
12 certifies that, at the time Consultant executes this Agreement and for its duration,
13 Consultant does not and will not perform services for any other client which would create
14 a conflict, whether monetary or otherwise, as between the interests of City and the interests
15 of that other client. And, Consultant shall obtain similar certifications from Consultant's
16 employees, subconsultants and contractors.

17 8. MATERIALS. Consultant shall furnish all labor and supervision,
18 supplies, materials, tools, machinery, equipment, appliances, transportation and services
19 necessary to or used in the performance of Consultant's obligations under this Agreement,
20 except as stated in Exhibit "D".

21 9. OWNERSHIP OF DATA. All materials, information and data
22 prepared, developed or assembled by Consultant or furnished to Consultant in connection
23 with this Agreement, including but not limited to documents, estimates, calculations,
24 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
25 models, reports, summaries, drawings, designs, notes, plans, information, material and
26 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
27 and City shall have the unrestricted right to use and disclose the Data in any manner and
28 for any purpose without payment of further compensation to Consultant. Copies of Data

1 may be retained by Consultant but Consultant warrants that Data shall not be made
2 available to any person or entity for use without the prior approval of City. This warranty
3 shall survive termination of this Agreement for five (5) years.

4 10. TERMINATION. Either party shall have the right to terminate this
5 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
6 prior written notice to the other party. In the event of termination under this Section, City
7 shall pay Consultant for services satisfactorily performed and costs incurred up to the
8 effective date of termination for which Consultant has not been previously paid. The
9 procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective
10 date of termination, Consultant shall deliver to City all Data developed or accumulated in
11 the performance of this Agreement, whether in draft or final form, or in process. And,
12 Consultant acknowledges and agrees that City's obligation to make final payment is
13 conditioned on Consultant's delivery of the Data to City.

14 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and
15 shall not disclose the Data or use the Data directly or indirectly, other than in the course of
16 performing its services, during the term of this Agreement and for five (5) years following
17 expiration or termination of this Agreement. In addition, Consultant shall keep confidential
18 all information, whether written, oral or visual, obtained by any means whatsoever in the
19 course of performing its services for the same period of time. Consultant shall not disclose
20 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit
21 of others except for the purpose of this Agreement.

22 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
23 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
24 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
25 without breach of this Agreement by Consultant; or (c) a third party who has a right to
26 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
27 disclosed pursuant to subpoena or court order.

28 ///

1 13. ADDITIONAL COSTS AND REDESIGN.

2 A. Any costs incurred by City due to Consultant's failure to meet
3 the standards required by the scope of work or Consultant's failure to perform fully
4 the tasks described in the scope of work which, in either case, causes City to request
5 that Consultant perform again all or part of the Scope of Work shall be at the sole
6 cost of Consultant and City shall not pay any additional compensation to Consultant
7 for its re-performance.

8 B. If the Project involves construction and the scope of work
9 requires Consultant to prepare plans and specifications with an estimate of the cost
10 of construction, then Consultant may be required to modify the plans and
11 specifications, any construction documents relating to the plans and specifications,
12 and Consultant's estimate, at no cost to City, when the lowest bid for construction
13 received by City exceeds by more than ten percent (10%) Consultant's estimate.
14 This modification shall be submitted in a timely fashion to allow City to receive new
15 bids within four (4) months after the date on which the original plans and
16 specifications were submitted by Consultant.

17 14. AMENDMENT. This Agreement, including all Exhibits, shall not be
18 amended, nor any provision or breach waived, except in writing signed by the parties which
19 expressly refers to this Agreement.

20 15. LAW. This Agreement shall be construed in accordance with the laws
21 of the State of California, and the venue for any legal actions brought by any party with
22 respect to this Agreement shall be the County of Los Angeles, State of California for state
23 actions and the Central District of California for any federal actions. Consultant shall cause
24 all work performed in connection with construction of the Project to be performed in
25 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
26 county or municipal governments or agencies (including, without limitation, all applicable
27 federal and state labor standards, including the prevailing wage provisions of sections 1770
28 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any

1 fire marshal, health officer, building inspector, or other officer of every governmental
2 agency now having or hereafter acquiring jurisdiction.

3 16. PREVAILING WAGES.

4 A. Consultant agrees that all public work (as defined in California
5 Labor Code section 1720) performed pursuant to this Agreement (the "Public
6 Work"), if any, shall comply with the requirements of California Labor Code sections
7 1770 *et seq.* City makes no representation or statement that the Project, or any
8 portion thereof, is or is not a "public work" as defined in California Labor Code
9 section 1720.

10 B. In all bid specifications, contracts and subcontracts for any
11 such Public Work, Consultant shall obtain the general prevailing rate of per diem
12 wages and the general prevailing rate for holiday and overtime work in this locality
13 for each craft, classification or type of worker needed to perform the Public Work,
14 and shall include such rates in the bid specifications, contract or subcontract. Such
15 bid specifications, contract or subcontract must contain the following provision: "It
16 shall be mandatory for the contractor to pay not less than the said prevailing rate of
17 wages to all workers employed by the contractor in the execution of this contract.
18 The contractor expressly agrees to comply with the penalty provisions of California
19 Labor Code section 1775 and the payroll record keeping requirements of California
20 Labor Code section 1771."

21 17. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
22 constitutes the entire understanding between the parties and supersedes all other
23 agreements, oral or written, with respect to the subject matter in this Agreement.

24 18. INDEMNITY.

25 A. Consultant shall indemnify, protect and hold harmless City, its
26 Boards, Commissions, and their officials, employees and agents ("Indemnified
27 Parties"), from and against any and all liability, claims, demands, damage, loss,
28 obligations, causes of action, proceedings, awards, fines, judgments, penalties,

1 costs and expenses, including attorneys' fees, court costs, expert and witness fees,
2 and other costs and fees of litigation, arising or alleged to have arisen, in whole or
3 in part, out of or in connection with (1) Consultant's breach or failure to comply with
4 any of its obligations contained in this Agreement, including any obligations arising
5 from the Project's compliance with or failure to comply with applicable laws,
6 including all applicable federal and state labor requirements including, without
7 limitation, the requirements of California Labor Code section 1770 *et seq.* or (2)
8 negligent or willful acts, errors, omissions or misrepresentations committed by
9 Consultant, its officers, employees, agents, subcontractors, or anyone under
10 Consultant's control, in the performance of work or services under this Agreement
11 (collectively "Claims" or individually "Claim").

12 B. In addition to Consultant's duty to indemnify, Consultant shall
13 have a separate and wholly independent duty to defend Indemnified Parties at
14 Consultant's expense by legal counsel approved by City, from and against all
15 Claims, and shall continue this defense until the Claims are resolved, whether by
16 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
17 breach, or the like on the part of Consultant shall be required for the duty to defend
18 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
19 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
20 in the defense.

21 C. If a court of competent jurisdiction determines that a Claim was
22 caused by the sole negligence or willful misconduct of Indemnified Parties,
23 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
24 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
25 percentage of willful misconduct attributed by the court to the Indemnified Parties.

26 D. The provisions of this Section shall survive the expiration or
27 termination of this Agreement.

28 19. AMBIGUITY. In the event of any conflict or ambiguity between this

1 Agreement and any Exhibit, the provisions of this Agreement shall govern.

2 20. NONDISCRIMINATION.

3 A. In connection with performance of this Agreement and subject
4 to applicable rules and regulations, Consultant shall not discriminate against any
5 employee or applicant for employment because of race, religion, national origin,
6 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
7 disability. Consultant shall ensure that applicants are employed, and that
8 employees are treated during their employment, without regard to these bases.
9 These actions shall include, but not be limited to, the following: employment,
10 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
11 termination; rates of pay or other forms of compensation; and selection for training,
12 including apprenticeship.

13 B. It is the policy of City to encourage the participation of
14 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
15 procurement process, and Consultant agrees to use its best efforts to carry out this
16 policy in its use of subconsultants and contractors to the fullest extent consistent
17 with the efficient performance of this Agreement. Consultant may rely on written
18 representations by subconsultants and contractors regarding their status.
19 Consultant shall report to City in May and in December or, in the case of short-term
20 agreements, prior to invoicing for final payment, the names of all subconsultants
21 and contractors hired by Consultant for this Project and information on whether or
22 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
23 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

24 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
25 accordance with the provisions of the Ordinance, this Agreement is subject to the
26 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
27 Long Beach Municipal Code, as amended from time to time.

28 A. During the performance of this Agreement, the Consultant

1 certifies and represents that the Consultant will comply with the EBO. The
2 Consultant agrees to post the following statement in conspicuous places at its place
3 of business available to employees and applicants for employment:

4 "During the performance of a contract with the City of Long Beach, the
5 Consultant will provide equal benefits to employees with spouses and its
6 employees with domestic partners. Additional information about the City of
7 Long Beach's Equal Benefits Ordinance may be obtained from the City of
8 Long Beach Business Services Division at 562-570-6200."

9 B. The failure of the Consultant to comply with the EBO will be
10 deemed to be a material breach of the Agreement by the City.

11 C. If the Consultant fails to comply with the EBO, the City may
12 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or
13 to become due under the Agreement may be retained by the City. The City may
14 also pursue any and all other remedies at law or in equity for any breach.

15 D. Failure to comply with the EBO may be used as evidence
16 against the Consultant in actions taken pursuant to the provisions of Long Beach
17 Municipal Code 2.93 et seq., Contractor Responsibility.

18 E. If the City determines that the Consultant has set up or used its
19 contracting entity for the purpose of evading the intent of the EBO, the City may
20 terminate the Agreement on behalf of the City. Violation of this provision may be
21 used as evidence against the Consultant in actions taken pursuant to the provisions
22 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

23 22. NOTICES. Any notice or approval required by this Agreement shall
24 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
25 postage prepaid, addressed to Consultant at the address first stated above, and to City at
26 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
27 to the City Engineer at the same address. Notice of change of address shall be given in
28 the same manner as stated for other notices. Notice shall be deemed given on the date

1 deposited in the mail or on the date personal delivery is made, whichever occurs first.

2 23. COPYRIGHTS AND PATENT RIGHTS.

3 A. Consultant shall place the following copyright protection on all
4 Data: © City of Long Beach, California ____, inserting the appropriate year.

5 B. City reserves the exclusive right to seek and obtain a patent or
6 copyright registration on any Data or other result arising from Consultant's
7 performance of this Agreement. By executing this Agreement, Consultant assigns
8 any ownership interest Consultant may have in the Data to City.

9 C. Consultant warrants that the Data does not violate or infringe
10 any patent, copyright, trade secret or other proprietary right of any other party.
11 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials
12 and employees harmless from any and all claims, demands, damages, loss, liability,
13 causes of action, costs or expenses (including reasonable attorney's fees) whether
14 or not reduced to judgment, arising from any breach or alleged breach of this
15 warranty.

16 24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants

17 that Consultant has not employed or retained any entity or person to solicit or obtain this
18 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,
19 commission or other monies based on or from the award of this Agreement. If Consultant
20 breaches this warranty, City shall have the right to terminate this Agreement immediately
21 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
22 due under this Agreement or otherwise recover the full amount of the fee, commission or
23 other monies.

24 25. WAIVER. The acceptance of any services or the payment of any
25 money by City shall not operate as a waiver of any provision of this Agreement or of any
26 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
27 Agreement shall not constitute a waiver of any other or subsequent breach of this
28 Agreement.

1 26. CONTINUATION. Termination or expiration of this Agreement shall
2 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
3 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

4 27. TAX REPORTING. As required by federal and state law, City is
5 obligated to and will report the payment of compensation to Consultant on Form 1099-
6 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
7 resulting from payments under this Agreement. Consultant shall submit Consultant's
8 Employer Identification Number (EIN), or Consultant's Social Security Number if
9 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
10 Financial Management. Consultant acknowledges and agrees that City has no obligation
11 to pay Consultant until Consultant provides one of these numbers.

12 28. ADVERTISING. Consultant shall not use the name of City, its officials
13 or employees in any advertising or solicitation for business or as a reference, without the
14 prior approval of the City Manager or designee.

15 29. AUDIT. City shall have the right at all reasonable times during the
16 term of this Agreement and for a period of five (5) years after termination or expiration of
17 this Agreement to examine, audit, inspect, review, extract information from and copy all
18 books, records, accounts and other documents of Consultant relating to this Agreement.

19 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or
20 designed to or entered for the purpose of creating any benefit or right for any person or
21 entity of any kind that is not a party to this Agreement.

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

PACIFIC RIM AUTOMATION, INC., a California corporation

4-26-2016, 2016

By [Signature]
Name MARZIO MIURA
Title PRESIDENT

4-26-2016, 2016

By [Signature]
Name CARTER DAVIS
Title CFO

"Consultant"

CITY OF LONG BEACH, a municipal corporation

May 23, 2016

By [Signature]
City Manager
Assistant City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City"

This Agreement is approved as to form on 4-28, 2016.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

EXHIBIT "A"

PACIFIC RIM AUTOMATION, INC.

16611 Burke Lane, Huntington Beach, CA 92647
714/899-7690 Phone 800/962-5458 Toll Free 714/899-7691 Fax
State License. # 622890

Wednesday, February 10, 2016

City of Long Beach, Department of Public Works
333 W. Ocean Blvd
Long Beach CA 90802
Attn: Art Cox

Via mail to: Art Cox (Arthur.Cox@longbeach.gov)

Re: Installing SCADA at SD-19 and 20

Dear Art

Currently both Lakewood Tunnel (SD-19) and Spring Tunnel (SD-20) locations have a SCADA panel delivered and communicating on a very limited bases. Only a single drop in level transmitter is connected with an open wire configuration and the SCADA panel itself is actually just plugged into the wall with a cord set. The SCADA monitoring points were never connected as the application is different than all other sites in many respects. One of the differences are the motor control centers are not standard requiring interposing relays for all points and custom engineering.

In this proposal we include all the necessary engineering, material, labor, programming and interface it implement the SCADA system on a complete and permanent basis.

Connection to the Motor Control centers (MCC): PRA will install EMT conduit to the MCCs and provide #14 THHN wire for connection to all required devices.

Connection to Level Transmitters: PRA will install EMT conduit to the transmitters and level probes and provide analog wire for connection to all required devices.

Electrical Interface to Field Components: As all items in the MCC sections are powered from different sources the need for an individual interposing relay for each signal is required for safe and proper operation. The required relays will be installed in the SCADA panel.

Controls: The standard SCADA controls will be implemented at the remote site and master location.

Master Monitoring. All of the standard alarms as well as dialer alarms will be implemented for the sites.

"DO NOT ENTER TUNNEL SINE". Currently the tunnel is equipped with a sine at both entrances this indicates to the drivers not to enter the tunnel. This is used if a fire occurs or CO levels are too high. If the SCADA system detects a HIGH-HIGH level indicating that the tunnel is flooded then this sine will be illuminated.

Redundant Level transmitter Installation: PRA will provide and install redundant level transmitters.

Bubbler Control System: PRA will remove and discard the existing level control system.

System Down Time: No down time of the pump control or SCADA communications will be allowed at any time during conversion.

Installation Price (per Breakdown)	\$79,850.00
Delivery	Installed and tested 60 days ARO

Long Beach Public Works Relocation of

Item#	Description	Cost est.
1	Install Antenna	\$ 4,000.00
2	Electrical Upgrades	\$ 3,000.00
3	19" Rack	\$ 4,000.00
4	UPS (rack mount)	\$ 2,000.00
5	Polling Remote Radio	\$ 2,000.00
6	Power Supplies	\$ 600.00
7	Servers (2)	\$ 10,000.00
8	Routers	\$ 3,000.00
9	19" Rack accessories	\$ 1,000.00
10	Printer	\$ 3,000.00
11	Software (Intouch)	\$ 9,000.00
12	Software (Win 911)	\$ 5,700.00
13	Software (Other)	\$ 1,500.00
14	DEB 101 Modules (2)	\$ 3,000.00
15	KEPWARE Drivers (2)	\$ 2,200.00
16	Mobil Devices (2)	\$ 1,000.00
17	Internet Access	\$ 2,200.00
18	55" Flat screen	\$ 2,000.00
	Hardware.	\$ 59,200.00
1	Build 19" panel	\$ 9,000.00
2	Relocate Poller	\$ 4,500.00
3	HMI Software Upgrades	\$ 10,000.00
4	Configure Computers	\$ 9,000.00
5	Reconfigure Radio	\$ 1,000.00
6	Configure Mobil Devices	\$ 2,000.00
7	Reconfigure Poller	\$ 5,000.00
	Labor	\$ 40,500.00
	H/W Mark up 15%	\$ 8,880.00
	Total	\$ 108,580.00

SD-19 and SD-20 SCADA Implementation

Item	Description	Cost
1	Interposing relays	\$ 1,200.00
2	Conduit	\$ 5,800.00
3	Wire Field	\$ 4,200.00
4	Lables	\$ 200.00
5	Field Multi-conductor	\$ 200.00
6	MCC Interface hardware	\$ 1,000.00
7	Installation Hardware	\$ 400.00
8	Enclouser	\$ 500.00
	Total HW and services	\$ 13,500.00
1	Drawings & engineering	\$ 3,600.00
2	Panel Wiring	\$ 2,500.00
3	Field Install	\$ 7,500.00
4	Program Modification (local)	\$ 4,600.00
5	Program Modification (HMII)	\$ 3,600.00
6	Testing	\$ 2,600.00
		\$ 24,400.00
	HW Mark-up	\$ 2,025.00
	Total Per Site	\$ 39,925.00
	Total Both Sites	\$ 79,850.00

PACIFIC RIM AUTOMATION, INC.

16611 Burke Lane - Huntington Beach, CA 92647
714/899-7690 Phone 800/962-5458 Toll Free 714/899-7691 Fax
State License. # 622890

June 24, 2015

Long Beach, City of
333 W. Ocean Blvd.
10Th. Floor
Long Beach, CA
Attn: Art Cox

Re: City-owned Pump Station Telemetry and Monitoring. Revision #3a

This scope assumes all the required equipment is already in service.

Annual 24/7 System Monitoring

Provide immediate response to station alarms via phone contact from the City and redundant direct contact from the SCADA alarm-alarm dialer system.

Provide 24/7 emergency phone support for the SCADA system operation with use of remote access software. I.E. being on the other end of a phone looking at the real-time SCADA screens and explaining what is happening to the City operator.

Provide 24/7 emergency response to the stations with critical alarms and when requested by the City. A 4 hour minimum charge including travel per rates listed below will be incurred. A typical response time to the site should be less than 60 Minutes.

Note: Services provided under this scope will include any Communication, Computer, Control, Instrumentation, Analytical or Electrical. Plumbing repairs required for components greater than 2" in size will be provided by others with the assistance of PRA.

- Annual 24/7 System Monitoring Cost: \$45,000.00

Monthly Maintenance and Testing

Perform monthly maintenance of all electrical equipment and control equipment. The monthly site visits will be scheduled every 30 days for all locations. Each time the station is visited for any reason and the scheduled testing and maintenance is performed, the clock for that station will be reset to day one. An example would be on January 1st the scheduled maintenance is done, and then a major storm event occurs on January 15th, requiring an after storm inspection. At that point the next scheduled visit would be February 15th (or before) not February 1st. However, the time between site visits will not exceed a 30 day period.

The testing procedure would be quick and simple, including but not be limited to:

- Confirm the station has power and lighting.
- Confirm the level indication is correct.
- Confirm communications by testing alarms.
- Back up local register data using win/mate software.
- Check motor oil level (If required)
- UPS test. Turn off utility power to confirm functionality of back-up power supply.
- Log runtime hours from local ETM timers for each pump.
- Start each pump in "Hand Mode" and "Auto Mode"
- Remove, inspect, clean and replace drop in level transducers.
- Test entry alarm by allowing the station to go into alarm and call out to the operator's cell phone.
- Test "High Level" alarm.

We estimate it will take about 1 hour every 30 days for each station for a total of 288 man hours per year.

After major storm, PRA will inspect all stations after each major storm with substantial rain fall.

Stock onsite all current SCADA electronic components for instant replacement in the case of a communication/control failure.

Store at a City pump station location, a second set of all current SCADA electronic components for instant replacement in the case of a communication / control failure. This on-site storage will involve a "jobbox" type enclosure that will house PLC modules, power supplies, fuses, documentation, spare programming device and other trouble shooting equipment. The onsite storage will allow any available PRA or City responder to avoid a time costly trip into the PRA shop for parts and equipment in the event of an emergency. PRA will assume all responsibility for the care and safekeeping of the stored items.

Coordinate with other contractors when needed for operation and control issues.

Meetings requested by the City will be charged separately per listed rates.

- Monthly Maintenance and Testing Cost: 288 Hours @ \$125.00 is \$36,000.00

Work outside this scope will be billed per the "Remote Field Response" section of this proposal after approval of the City.

Reports

No formal report format is in use or defined at this time. Reports described below are in the form of color screen prints of all station alarms and historical trending.

PRA will compile monthly reports as required including run hours and storm data as collected by the system.

After a major storm reports will be provided on all stations along with a timely back up of report and historical data to avoid loss of information.

- Reports Cost; is included in the Annual 24/7 System Monitoring price.

Work outside this scope will be billed per the "Remote Field Response" section of this proposal after approval of the City.

Annual Support of Workstation Software & Monthly maintenances of workstation

Backup of alarm/event data, defrag of hard drives testing, diagnostics, viruses protection, dialer call out updates.

Note: HMI software upgrades, reporting software upgrades/support (example Microsoft SQL), other third party software upgrades or future paid factory support are not included as they cannot be foreseen at this time.

Includes labor and travel expense only for above scope:

- Annual Support of Workstation Software Cost:\$9,600.00

Computer Upgrade

Computer Upgrade of existing SCADA System to start migration away from existing Windows XP OS based SCADA system that Microsoft no longer supports. The existing system has 2 XP Workstations and 1 new Windows 7 Workstation that needs additional software listed below.

- | | |
|---|--------------|
| 1. Computer Workstation running Windows 7 Qty 1 | \$ 6,000.00 |
| 2. Program SCADA HMI on new Workstation (Labor) | \$ 5,000.00 |
| 3. Win 911 Dialer Software Qty 2 | \$ 5,000.00 |
| 4. WIN 911 Dialogic Modems Qty 2 | \$ 2,500.00 |
| 5. Program the Win911 Dialer (Labor) | \$ 10,000.00 |
| 6. NR&D DEB101 Module Supports Windows 7 Qty 1 | \$ 2,500.00 |
| 7. Kepware Drivers Qty 2 | \$ 2,500.00 |
| 8. VM Ware Software Qty 1 | \$ 250.00 |
| 9. PC Anywhere 12.5 Qty 1 | \$ 250.00 |
| 10. Configure Kepware Database (Labor) | \$ 5,000.00 |
| 11. Configure NR&D DEB101 Module (Labor) | \$ 1,000.00 |
| 12. Sales Tax on Hardware and Software | \$1,710.00 |
| • Computer Upgrade: | \$41,710.00 |

Remote Field Response

When requested by the City: will be billed per existing contract.

\$125.00 per hour. 7am. to 7pm. 365 days per year.

\$125.00 per hour x 1.5. 7pm. to 7am. 365 days per year.

No overtime or holiday rates apply, as this is a 24/7 contract.

Annual 24/7 System Monitoring.	\$45,000.00
Monthly Maintenance and Testing.	\$36,000.00
Annual Support of Workstation Software.	\$9,600.00
Owner Contingency for Additional Work	\$75,000.00
Computer Upgrade	\$41,710.00
Total	\$207,310.00
Sales Tax is included.	
Terms. Progress payments	
Delivery. T.B.D.	

If you have any question or concerns regarding this proposal please contact me directly at
714-330-0113 mmiller@symaxexchange.com

Carter Davis
CFO Pacific Rim Automation Inc.

EXHIBIT “B”

City’s Representative:

Arthur Cox

(562) 570-2784

EXHIBIT “C”

Materials/Information Furnished: None