

**CITY OF MANHATTAN BEACH
GENERAL SERVICES AGREEMENT WITH HADRONEX**

THIS GENERAL SERVICES AGREEMENT ("Agreement") is made and entered into as of July 1, 2019, by and between the City Of Manhattan Beach, a California municipal corporation ("City") and Hadronex, Inc. dba SmartCover Systems, a Delaware corporation ("Contractor"). City and Contractor are sometimes referred to herein as the "Parties", and individually as a "Party".

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Scope of Services.

A. Contractor shall perform the work and provide all labor, materials, equipment and services (hereinafter, the "Work" or "Services") in a good and workmanlike manner for the project identified as Sewer Smart Covers, as described in this Agreement, the Scope of Work attached hereto as Exhibit A, and incorporated herein by this reference, and Contractor's Proposal dated June 18, 2019, a portion of which is attached hereto as Exhibit B and incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and the incorporated documents, the terms of this Agreement shall control.

B. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Contractor Representative shall be Gregory Quist, CEO (the "Contractor Representative"). The Contractor Representative shall directly manage Contractor's services under this Agreement. Contractor shall not change the Contractor Representative without City's prior written consent.

C. Contractor shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

D. This Agreement calls for services that, in whole or in part, constitute "public works" as defined in the California Labor Code. Therefore, as to those services that are "public works", Contractor shall comply in all respects with all applicable provisions of the California Labor Code, including those set forth in Exhibit C hereto.

2. Extra Work. Extra work, when ordered in writing by the City Representative and accepted by Contractor, shall be paid for in accordance with the terms of the written work order. Payment for extra work will be made at the unit price or lump sum previously agreed upon in writing between Contractor and the City Representative. All extra work shall be adjusted daily upon the report sheet furnished by Contractor, prepared by the City Representative, and signed by both parties; and the daily report shall be considered thereafter the true record of extra work done.

3. Term. The term of this Agreement shall be from the Effective Date through July 1, 2022, unless sooner terminated as provided in Section 12 of this Agreement. Additionally, there shall be two one-year options to renew the Agreement with the mutual written consent of both parties. If not renewed prior to the anniversary date, this Agreement may continue on a month-to-month basis under the same terms and conditions for a maximum period not to exceed six months or until renewed, terminated or awarded to a new contractor, whichever is less.

4. Time of Performance.

A. Contractor will not perform any work under this Agreement until:

1) Contractor furnishes proof of insurance as required under Section 14 of this Agreement, and City's Risk Manager has approved the proof of insurance; and

2) City gives Contractor a written notice to proceed (NTP).

B. Should Contractor begin work in advance of receiving a written NTP, any such services are at Contractor's own risk.

C. Contractor shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

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5. Time. Time is of the essence in this Agreement.

6. Force Majeure. Neither City nor Contractor shall be responsible for delays in performance under this Agreement due to causes beyond its control, including but not limited to acts of God, acts of public enemies, acts of the government, fires, floods or other casualty, epidemics, earthquakes, labor stoppages or slowdowns, freight embargoes, unusually severe weather, and supplier delays due to such causes. Neither economic nor market conditions nor the financial condition of either party shall be considered a cause to excuse delay pursuant to this Section. Each party shall notify the other promptly in writing of each such excusable delay, its cause and its expected delay, and shall upon request update such notice.

7. Compensation.

A. In consideration of the services rendered hereunder, City shall pay Contractor a fee not to exceed \$49,885.37 Dollars (the "Maximum Compensation"), in accordance with the prices as submitted in Exhibit B.

B. City shall only reimburse Contractor for those actual and necessary expenses expressly set forth in Exhibit B. The Maximum Compensation shall include the attendance of Contractor at all project meetings reasonably deemed necessary by City.

8. Payments. Contractor shall submit to City an invoice on a monthly basis for the services performed pursuant to this Agreement. Each invoice shall itemize the services

rendered during the billing period, hourly rates charged, if applicable, fee for task or job, if applicable, and the amount due. City shall review each invoice and notify Contractor in writing within ten business days of receipt of any disputed invoice amounts.

City shall make payments within 30 days after receipt of an undisputed and properly submitted payment request from Contractor. City shall return to Contractor any payment request determined not to be a proper payment request as soon as practicable, but not later than seven days after receipt, and shall explain in writing the reason(s) why the payment request is not proper.

9. Taxes. Contractor shall calculate payment for all sales, unemployment, and other taxes imposed by local, state and federal law. These payments are included in the total amounts in Exhibit B.

10. Audit. City or its representative shall have the option of inspecting and/or auditing all records and other written materials used by Contractor in preparing its billings to City as a condition precedent to any payment to Contractor. Contractor will promptly furnish documents requested by City. Additionally, Contractor shall be subject to State Auditor examination and audit at the request of City or as part of any audit of City, for a period of three years after final payment under this Agreement.

11. Unresolved Disputes. In the event of any dispute or controversy with City over any matter whatsoever, Contractor shall not cause any delay or cessation in or of work, but shall proceed with the performance of the work in dispute. Manhattan Beach Municipal Code Chapter 2.56 ("Matters Requiring Filing of Claims") shall govern the procedures of the claim process, and these provisions are incorporated herein by this reference.

12. Termination. This Agreement may be canceled by City at any time with or without cause and without penalty upon 30 days' written notice. This Agreement may be canceled by Contractor at any time with or without cause and without penalty upon 90 days' written notice. In the event of termination, all finished or unfinished work and other materials shall, at the option of City, be delivered to and become the property of City. In the event of termination without fault of Contractor, City shall pay Contractor for all services satisfactorily rendered prior to date of termination, and such payment shall be in full satisfaction of all services rendered hereunder.

13. Indemnification.

A. Indemnities.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential

damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

14. Insurance Requirements.

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Contractor has no employees while performing Services under this Agreement, a workers' compensation policy is not required, but Contractor shall execute a declaration that it has no employees.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Contractor shall, within two business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 13 of this Agreement.

K. Broader Coverage/Higher Limits. If Contractor maintains broader coverage and/or higher limits than the minimums required above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

L. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

15. Familiarity with Work.

A. By executing this Agreement, Contractor represents that it:

- 1) Has thoroughly investigated and considered the scope of services to be performed;
- 2) Has carefully considered how the services should be performed; and
- 3) Understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.

B. If services involve work upon any site, Contractor warrants that it has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing the services hereunder. Should Contractor discover any latent or unknown conditions that may materially affect the performance of the services, Contractor will immediately inform City of such fact and will not proceed except at Contractor's own risk until written instructions are received from City.

16. Independent Contractor. Contractor is and shall at all times remain, as to City, a wholly independent contractor. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as herein set forth; and Contractor is free to dispose of all portions of its time and activities which it is not obligated to devote to City in such a manner and to such persons, firms, or corporations as Contractor wishes except as expressly provided in this Agreement. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City, bind City in any manner, or otherwise act on behalf of City as an agent. Contractor shall not, at any time or in any manner, represent that it or any of its agents, servants or employees, are in any manner agents, servants or employees of City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and its employees. Contractor further agrees to indemnify and hold City

harmless from any failure of Contractor to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any compensation due to Contractor under this Agreement any amount due to City from Contractor as a result of its failure to promptly pay to City any reimbursement or indemnification arising under this Section.

17. Workers' Compensation Insurance. California Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

18. Nondiscriminatory Employment. Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, gender, sex, sexual orientation, age or condition of disability. Contractor understands and agrees that it is bound by and will comply with the nondiscrimination mandates of all statutes and local ordinances and regulations.

19. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations in force at the time Contractor performs its services pursuant to this Agreement.

20. Contractor's Representations. Contractor represents, covenants and agrees that: a) Contractor is licensed, qualified, and capable of furnishing the labor, materials, and expertise necessary to perform the services in accordance with the terms and conditions set forth in this Agreement; b) there are no obligations, commitments, or impediments of any kind that will limit or prevent its full performance under this Agreement; c) there is no litigation pending against Contractor, and Contractor is not the subject of any criminal investigation or proceeding; and d) to Contractor's actual knowledge, neither Contractor nor its personnel have been convicted of a felony.

21. Warranty. Contractor warrants all Work under this Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees to warranty labor for ninety (90) days, and parts, materials, and workmanship for a period of one year (or the period of time specified elsewhere in this Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance. Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and perform

with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. Contractor shall perform such tests as City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of City, regardless of whether or not such warranties and guarantees have been transferred or assigned to City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of City, City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse City for any expenses incurred hereunder upon demand.

22. Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the City Representative or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

23. Confidentiality and Release of Information.

A. All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Representative.

B. Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Representative or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

C. If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Contractor's conduct.

D. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

24. Conflicts of Interest. Contractor agrees not to accept any employment or representation during the term of this Agreement or within 12 months after completion of the work under this Agreement which is or may likely make Contractor "financially interested," as provided in Government Code Sections 1090 and 87100, in any decisions made by City on any matter in connection with which Contractor has been retained pursuant to this Agreement.

25. Third Party Claims. City shall have full authority to compromise or otherwise settle any claim relating to this Agreement at any time. City shall timely notify Contractor of the receipt of any third-party claim relating to the Agreement. City shall be entitled to recover its reasonable costs incurred in providing this notice.

26. Non-Assignability; Subcontracting. Contractor shall not assign or transfer any interest in this Agreement nor any part thereof, whether by assignment or novation, without City's prior written consent. Any purported assignment without written consent shall be null, void, and of no effect; and Contractor shall hold harmless, defend and indemnify City and its officers, officials, employees, agents and representatives with respect to any claim, demand or action arising from or relating to any unauthorized assignment.

27. Applicable Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding

California's choice of law rules. Venue for any such action relating to this Agreement shall be in the Los Angeles County Superior Court.

28. Attorneys' Fees. In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

29. Titles. The titles used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part of it.

30. Authority. The persons executing this Agreement on behalf of Contractor warrants and represents that they have the authority to execute this Agreement on behalf of Contractor and have the authority to bind Contractor to the performance of its obligations hereunder.

31. Incorporation by Reference. All Exhibits attached hereto are incorporated herein by reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Contractor's proposal, the provisions of this Agreement shall control.

32. Entire Agreement. This Agreement, including any other documents incorporated herein by specific reference, represents the entire and integrated agreement between City and Contractor. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be modified or amended, nor any provision or breach waived, except in a writing signed by both parties which expressly refers to this Agreement.

33. Construction. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted this Agreement or who drafted that portion of this Agreement.

34. Non-waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

35. Notice. Except as otherwise required by law, any notice or other communication authorized or required by this Agreement shall be in writing and shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during Contractor's or City's regular business hours or (b) on the third business day following

deposit in the United States mail, postage prepaid, to the addresses listed below, or at such other address as one party may notify the other:

To City:

Shawn Igoe
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

To Contractor:

Greg Quist
SmartCover Systems
2110 Enterprise Street
Escondido, CA 92029

36. Counterparts. This Agreement may be executed in counterpart originals, duplicate originals, or both, each of which is deemed to be an original for all purposes.

37. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed the within Agreement the day and year first above written.

[signatures begin on next page]

CITY OF MANHATTAN BEACH

CONTRACTOR

Hadronex, Inc. DBA SmartCover Systems

By: 
Bruce Moe, City Manager

By:  07-23-2019
Greg Quist, CEO, SmartCover Systems

ATTEST:

By:  8-15-19
Liza Tamura, City Clerk

APPROVED AS TO FORM:

By: 
Quinn M. Barrow, City Attorney

APPROVED AS TO CONTENT:

By: 
Steve S. Charelian, Finance Director

EXHIBIT A

Scope of Work

The Contractor will provide and install new Smart Covers for seven (7) sewer manholes. The Smart Cover monitoring system is completely self contained, turn-key solution developed specifically for the water and wastewater industry. Smart Covers have the capability to detect sources of I&I, guard against and prevent sewer spills by assessing water level and water flow.

Solution includes:

- Remote Sensing System located at each monitoring site
- Advanced Iridium Satellite Communications
- Data Storage and Management
- Cloud-based user software with 24/7 browser access
- Full warranty support for all parts for the entire agreement period

Data Sources SmartCover Systems provides additional data sources including:

- SmartRain™: Local radar data from NOAA. One SmartRain per Remote Sensing System
- StreamWatch™: Local stream and river data from USGS
- SmartTide™: Local tidal data from NOAA
- SmartFLOE®: Flow Estimation

SmartCover Systems provides full installation, maintenance, and technical support throughout the term of the agreement:

- System Installation includes by a local, certified field service technician
- Initial Website set up and in-person website training will be provided by a SmartCover Systems representative
- Applications engineering support provided for training and website assistance as requested

EXHIBIT B

Contractor's Proposal



Comprehensive Monitoring Service Program Proposal SmartCover® Sewer Monitoring Systems 7 Units

City of Manhattan Beach

Attention: Shawn Igoe

Offered by:
SmartCover® Systems™



Quotation Date: 6/18/2019
Quote Valid: 60 Days
Offered by: Eric Van Cleave
Regional Sales Manager – Southern California
760.224.9526 / evcleave@smartcoversystems.com

SmartCover Systems (SCS) is pleased to provide the following Proposal:

The SmartCover system provides continuous remote sensing

- User-definable alarm settings
- An easy-to-use web-based interface
- Long and short-term data collection and analysis.

The SmartCover System is proven to operate reliably in sewers for over 14 years, with thousands of installations across North America.

Proposal Summary

Part Number	Description	7 Systems
CP-H-3	<p>Overview SmartCover is a complete end-to-end solution including:</p> <ul style="list-style-type: none"> • Remote Sensing System located at each monitoring site • Advanced Iridium Satellite Communications • Data Storage and Management • Cloud-based user software with 24/7 browser access • Full warranty support for all parts for the entire agreement period <p>Data Sources SmartCover Systems provides additional data sources including:</p> <ul style="list-style-type: none"> • SmartRain™: Local radar data from NOAA. One SmartRain per Remote Sensing System • StreamWatch™: Local stream and river data from USGS • SmartTide™: Local tidal data from NOAA • SmartFLOE®: Flow Estimation <p>Installation and Ongoing Support SmartCover Systems provides full installation, maintenance, and technical support throughout the agreement:</p> <ul style="list-style-type: none"> • System Installation includes by a local, certified field service technician. Note: The City provides traffic control. • Initial Website set up and in-person website training will be provided by a SmartCover Systems representative • Applications engineering support provided for training and website assistance as requested 	

Year 1

Part Number	Service Description details	Price (Each)	7 Systems
CP-H-3	Comprehensive Monitoring Service Program	\$2,220	\$15,540.00
Installation	Labor Installation of SmartCover® Systems~ by Trained SmartCover® Systems~ Field Tech	\$200	\$1,400
CA Tax	Tax will be charged for hardware portion only at the rate of 9.5% (City of Manhattan Beach)	NA	\$621.79
Total			\$17,561.79

Year 2

Part Number	Service Description details	Price (Each)	7 Systems
CP-H-3	Comprehensive Monitoring Service Program	\$2,220	\$15,540.00
CA Tax	Tax will be charged for hardware portion only at the rate of 9.5% (City of Manhattan Beach)	NA	\$621.79
Total			\$16,161.79

Year 3

Part Number	Service Description details	Price (Each)	7 Systems
CP-H-3	Comprehensive Monitoring Service Program	\$2,220	\$15,540.00
CA Tax	Tax will be charged for hardware portion only at the rate of: 9.5% (City of Manhattan Beach)	NA	\$621.79
Total	Total of above fees		\$16,161.79

3 Year Total - \$49,885.37

Above Pricing Assumes These Conditions:

- This program is offered for customers looking to acquire 5 or more units
- There are discount structures at 11-20 units, and 20+ units
- CP-H-3 pricing above is equivalent to \$185 a unit/month
- Labor Is Not Included Beyond Installation

Payment Terms

- Paid annually, at the beginning of each year
- After the year 3, the customer owns the hardware.
- A Comprehensive Monitoring Service Program is available for years 4 and beyond at a lower rate than the first 3 years.

Cancellation Terms

Cancellation within two years of the commencement of the contract period is subject to 66% of the three-year cost; cancellation thereafter is subject to the full three-year contract cost

EXHIBIT C
TERMS FOR COMPLIANCE WITH CALIFORNIA LABOR LAW REQUIREMENTS

1. This Agreement calls for services that, in whole or in part, constitute “public works” as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code (“Chapter 1”). Further, Contractor acknowledges that this Agreement is subject to (a) Chapter 1 and (b) the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. Therefore, as to those Services that are “public works”, Contractor shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 above.

3. Contractor shall be registered with the Department of Industrial Relations in accordance with California Labor Code Section 1725.5, and has provided proof of registration to City prior to the Effective Date of this Agreement. Contractor shall not perform work with any subcontractor that is not registered with DIR pursuant to Section 1725.5. Contractor and subcontractors shall maintain their registration with the DIR in effect throughout the duration of this Agreement. If the Contractor or any subcontractor ceases to be registered with DIR at any time during the duration of the project, Contractor shall immediately notify City.

4. Pursuant to Labor Code Section 1771.4, Contractor’s Services are subject to compliance monitoring and enforcement by DIR. Contractor shall post job site notices, as prescribed by DIR regulations.

5. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Agreement.

6. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to City, forfeit \$200.00 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

7. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform City of the location of the records. Pursuant to Labor Code Section 1771.4, Contractor and each

subcontractor shall furnish such records to the Labor Commissioner, at least monthly, in the form specified by the Labor Commissioner.

8. Contractor shall comply with and be bound by the provisions of Labor Code seq. concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.

9. The Contractor shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. The Contractor and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or state law providing for the debarment of contractors from public works. If the Contractor or any subcontractor becomes debarred or suspended during the duration of the project, the Contractor shall immediately notify City.

10. Contractor acknowledges that eight hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to City, forfeit \$25.00 for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

11. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

12. For every subcontractor who will perform work on the project, Contractor shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with

those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor's expense with counsel reasonably acceptable to City) City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Contractor under this Section shall survive the termination of the Agreement.