

**Agreement between  
City of Chula Vista  
and Professional Pipe Services to Provide  
Sewer Manhole Inspection and Evaluation Services**

This agreement (Agreement), effective March 27, 2014, is between the City-related entity whose name and business form is indicated on Exhibit A, Paragraph 2, (City), and the entity whose name, business form, place of business and telephone numbers are indicated on Exhibit A, Paragraphs 4 through 6, (Consultant), and is made with reference to the following facts:

**RECITALS**

WHEREAS, The City of Chula Vista has over 12,000 sewer manholes that provide access to the City crew for maintaining the sewer collection system; and

WHEREAS, over time, these sewer manholes have been exposed to harsh wastewater environment and some might have sustained severe deterioration; and

WHEREAS, some of the sewer manholes in the older section of the City (mostly western side and Montgomery Area) have exceeded their service life and need to be inspected to evaluate their conditions; and

WHEREAS, City staff would like to hire a contractor to inspect and evaluate the sewer manholes throughout the City in order to prioritize the Sewer Manhole Rehabilitation Capital Improvement Program ; and

WHEREAS, Professional Pipe Services (PPS) warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Consultant to City in accordance with the time frames and the terms and conditions of this Agreement.

**[End of Recitals. Next Page Starts Obligatory Provisions.]**

## OBLIGATORY PROVISIONS PAGES

NOW, THEREFORE, for valuable consideration the City and Consultant do hereby mutually agree as follows:

All of the Recitals above are incorporated into this Agreement by this reference.

### ARTICLE I. CONSULTANT'S OBLIGATIONS

#### A. General

1. General Duties. Consultant shall perform all of the services described on Exhibit A, Paragraph 7 (General Duties).
2. Scope of Work and Schedule. In performing and delivering the General Duties, Consultant shall also perform the services, and deliver to City the "Deliverables" described in Exhibit A, Paragraph 8, entitled "Scope of Work and Schedule," according to, and within the time frames set forth in Exhibit A, Paragraph 8, time being of the essence of this agreement. The General Duties and the work and Deliverables required in the Scope of Work and Schedule shall be referred to as the "Defined Services." Failure to complete the Defined Services by the times indicated does not, except at the option of the City, terminate this Agreement.
  - a. *Reductions in Scope of Work.* City may independently, or upon request from Consultant, from time to time, reduce the Defined Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.
  - b. *Additional Services.* In addition to performing the Defined Services, City may require Consultant to perform additional consulting services related to the Defined Services (Additional Services), and upon doing so in writing, if they are within the scope of services offered by Consultant, Consultant shall perform same on a time and materials basis at the rates set forth in the "Rate Schedule" in Exhibit A, Paragraph 10(C), unless a separate fixed fee is otherwise agreed upon. All compensation for Additional Services shall be paid monthly as billed.
3. Standard of Care. The Consultant expressly warrants that the work to be performed pursuant to this Agreement, whether Defined Services or Additional Services, shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.
  - a. *No Waiver of Standard of Care.* Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subcontractors.

**B. Application of Laws.** Should a federal or state law pre-empt a local law, or regulation, the Consultant must comply with the federal or state law and implementing regulations. No provision of this Agreement requires the Consultant to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of federal, state, territorial, or local law, regulation, or ordinance. If compliance with any provision of this Agreement violates or would require the Consultant to violate any law, the Consultant agrees to notify City immediately in writing. Should this occur, the City and the Consultant agree that they will make appropriate arrangements to proceed with or, if necessary, amend or terminate this Agreement, or portions of it, expeditiously.

1. Subcontractors. Consultant agrees to take appropriate measures necessary to ensure that all participants utilized by the Consultant to complete its obligations under this Agreement, such as subcontractors, comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local, affecting Project implementation. In addition, if a subcontractor is expected to fulfill any responsibilities of the Consultant under this Agreement, the Consultant shall ensure that the subcontractor carries out the Consultant's responsibilities as set forth in this Agreement.

**C. Insurance.** Contractor shall procure and maintain insurance of the type, in the amounts, and containing those additional provisions identified in Exhibit "B" attached.

**D. Security for Performance**

1. Performance Bond. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Performance Bond (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Performance Bond"), then Consultant shall provide to the City a performance bond, in the amount indicated at Exhibit A, Paragraph 18, in the form prescribed by the City and by such sureties which are authorized to transact such business in the State of California, listed as approved by the United States Department of Treasury Circular 570, <http://www.fms.treas.gov/c570>, and whose underwriting limitation is sufficient to issue bonds in the amount required by the Agreement, and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure, except as provided otherwise by laws or regulations. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. Surety companies must be duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits so required. Form must be satisfactory to the Risk Manager or City.

2. Letter of Credit. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Letter of Credit"), then Consultant shall provide to the City an irrevocable letter of credit callable by the City at its unfettered discretion by submitting to the bank a letter, signed by the City Manager, stating that the Consultant is in breach of the terms of this Agreement. The letter of credit shall be issued by a bank, and be in a form and amount satisfactory to the Risk

Manager or City Attorney which amount is indicated in the space adjacent to the term, "Letter of Credit," in Exhibit A, Paragraph 18.

3. Other Security. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide security other than a Performance Bond or a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Other Security"), then Consultant shall provide to the City such other security therein listed in a form and amount satisfactory to the Risk Manager or City Attorney.

- E. **Business License**. Consultant agrees to obtain a business license from the City and to otherwise comply with Title 5 of the Chula Vista Municipal Code.

## ARTICLE II. CITY OBLIGATIONS

- A. **Consultation and Cooperation**. City shall regularly consult the Consultant for the purpose of reviewing the progress of the Defined Services and Schedule, and to provide direction and guidance to achieve the objectives of this Agreement. The City shall allow Consultant access to its office facilities, files and records, as deemed necessary and appropriate by the City, throughout the term of this Agreement. In addition, City agrees to provide the materials identified at Exhibit A, Paragraph 9, with the understanding that delay in the provision of those materials beyond thirty days after authorization to proceed, shall constitute a basis for the justifiable delay in the Consultant's performance.

B. **Compensation**.

1. Following Receipt of Billing. Upon receipt of a properly prepared bill from Consultant, submitted to the City as indicated in Exhibit A, Paragraph 17, but in no event more frequently than monthly, on the day of the period indicated in Exhibit A, Paragraph 17, City shall compensate Consultant for all services rendered by Consultant according to the terms and conditions set forth in Exhibit A, Paragraph 10, adjacent to the governing compensation relationship indicated by a "checkmark" next to the appropriate arrangement, subject to the requirements for retention set forth in Paragraph 18 of Exhibit A, and shall compensate Consultant for out of pocket expenses as provided in Exhibit A, Paragraph 11.
2. Supporting Information. Any billing submitted by Consultant shall contain sufficient information as to the propriety of the billing, including properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature of the charges to the Project in order to permit the City to evaluate that the amount due and payable is proper, and such billing shall specifically contain the City's account number indicated on Exhibit A, Paragraph 17(C) to be charged upon making such payment.
3. Exclusions. In determining the amount of the compensation City will exclude any cost:  
1) incurred prior to the effective date of this Agreement; or 2) arising out of or related to

the errors, omissions, negligence or acts of willful misconduct of the Consultant, its agents, employees, or subcontractors.

- a. *Errors and Omissions.* In the event that the City Administrator determines that the Consultant's negligence, errors, or omissions in the performance of work under this Agreement has resulted in expense to City greater than would have resulted if there were no such negligence, errors, omissions, Consultant shall reimburse City for any additional expenses incurred by the City. Nothing in this paragraph is intended to limit City's rights under other provisions of this Agreement.
4. Payment Not Final Approval. The Consultant understands and agrees that payment to the Consultant for any Project cost does not constitute a City final decision about whether that cost is allowable and eligible for payment under the Project and does not constitute a waiver of any violation of Consultant of the terms of the Agreement. The Consultant acknowledges that City will not make a final determination about the eligibility of any cost until the final payment has been made on the Project or the results of an audit of the Project requested by the City has been completed, whichever occurs latest. If City determines that the Consultant is not entitled to receive any portion of the compensation due or paid, City will notify the Consultant in writing, stating its reasons. The Consultant agrees that Project closeout will not alter the Consultant's responsibility to return any funds due City as a result of later refunds, corrections, or other similar transactions; nor will Project closeout alter the right of City to disallow costs and recover funds provided for the Project on the basis of a later audit or other review.
    - a. *Consultant's Obligation to Pay.* Upon notification to the Consultant that specific amounts are owed to City, whether for excess payments or disallowed costs, the Consultant agrees to remit to City promptly the amounts owed, including applicable interest.

### ARTICLE III. ETHICS

#### A. Financial Interests of Consultant

1. Consultant is Designated as an FPPC Filer. If Consultant is designated on Exhibit A, Paragraph 14, as an "FPPC filer," Consultant is deemed to be a "Consultant" for the purposes of the Political Reform Act conflict of interest and disclosure provisions, and shall report economic interests to the City Clerk on the required Statement of Economic Interests in such reporting categories as are specified in Paragraph 14 of Exhibit A, or if none are specified, then as determined by the City Attorney.
2. No Participation in Decision. Regardless of whether Consultant is designated as an FPPC Filer, Consultant shall not make, or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement.

3. Search to Determine Economic Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant warrants and represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as the term is used in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic interest which would conflict with Consultant's duties under this Agreement.
4. Promise Not to Acquire Conflicting Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant will not acquire, obtain, or assume an economic interest during the term of this Agreement which would constitute a conflict of interest as prohibited by the Fair Political Practices Act.
5. Duty to Advise of Conflicting Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant will immediately advise the City Attorney if Consultant learns of an economic interest of Consultant's that may result in a conflict of interest for the purpose of the Fair Political Practices Act, and regulations promulgated thereunder.
6. Specific Warranties Against Economic Interests. Consultant warrants, represents and agrees that:
  - a. Neither Consultant, nor Consultant's immediate family members, nor Consultant's employees or agents (Consultant Associates) presently have any interest, directly or indirectly, whatsoever in any property which may be the subject matter of the Defined Services, or in any property within 2 radial miles from the exterior boundaries of any property which may be the subject matter of the Defined Services, (Prohibited Interest), other than as listed in Exhibit A, Paragraph 14.
  - b. No promise of future employment, remuneration, consideration, gratuity or other reward or gain has been made to Consultant or Consultant Associates in connection with Consultant's performance of this Agreement. Consultant promises to advise City of any such promise that may be made during the Term of this Agreement, or for twelve months thereafter.
  - c. Consultant Associates shall not acquire any such Prohibited Interest within the Term of this Agreement, or for twelve months after the expiration of this Agreement, except with the written permission of City.
  - d. Consultant may not conduct or solicit any business for any party to this Agreement, or for any third party that may be in conflict with Consultant's responsibilities under this Agreement, except with the written permission of City.

#### IV. LIQUIDATED DAMAGES

A. **Application of Section.** The provisions of this section apply if a Liquidated Damages Rate is provided in Exhibit A, Paragraph 13.

1. Estimating Damages. It is acknowledged by both parties that time is of the essence in the completion of this Agreement. It is difficult to estimate the amount of damages resulting from delay in performance. The parties have used their judgment to arrive at a reasonable amount to compensate for delay.
2. Amount of Penalty. Failure to complete the Defined Services within the allotted time period specified in this Agreement shall result in the following penalty: For each consecutive calendar day in excess of the time specified for the completion of the respective work assignment or Deliverable, the Consultant shall pay to the City, or have withheld from monies due, the sum of Liquidated Damages Rate provided in Exhibit A, Paragraph 13 (Liquidated Damages Rate).
3. Request for Extension of Time. If the performance of any act required of Consultant is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the Consultant, as determined by the City, Consultant shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event Consultant claims the existence of such a delay, the Consultant shall notify the City's Contract Administrator, or designee, in writing of that fact within ten calendar days after the beginning of any such claimed delay. Extensions of time will not be granted for delays to minor portions of work unless it can be shown that such delays did or will delay the progress of the work.

## ARTICLE V. INDEMNIFICATION

### A. **Defense, Indemnity, and Hold Harmless.**

1. General Requirement. To the maximum extent allowed by law, Consultant shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents and employees, from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorney's fees and actual costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Consultant, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Defined Services, the results of such performance, or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or sole willful misconduct of the City, its officers, employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party.

2. Design Professional Services. Notwithstanding the forgoing, if the services provided under this Agreement are design professional services, as defined by California Civil Code section 2782.5, as may be amended from time to time, the defense and indemnity obligation under Section 1, above, shall be limited to the extent required by California Civil Code section 2782.8.
3. Costs of Defense and Award. Included in the obligations in Sections A.1 and A.2, above, is the Consultant's obligation to defend, at Consultant's own cost, expense and risk, any and all suits, actions or other legal proceedings, that may be brought or instituted against the City, its directors, officials, officers, employees, agents and/or volunteers, subject to the limitations in Sections A.1. and A.2. Subject to the limitations in Sections A.1. and A.2., Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents and/or volunteers, for any and all related legal expenses and costs incurred by each of them.
4. Insurance Proceeds. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or volunteers.
5. Declarations. Consultant's obligations under Article V shall not be limited by any prior or subsequent declaration by the Consultant.
6. Enforcement Costs. Consultant agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in Article V.
7. Survival. Consultant's obligations under Article V shall survive the termination of this Agreement.
8. No Alteration of Other Obligations. This Article V, shall in no way alter, affect or modify any of the Consultant's other obligations and duties under this Agreement.

#### ARTICLE VI. TERMINATION OF AGREEMENT

- A. **Termination for Cause.** If, through any cause, Consultant shall fail to fulfill in a timely and proper manner Consultant's obligations under this Agreement, or if Consultant shall violate any of the covenants, agreements or stipulations of this Agreement, City shall have the right to terminate this Agreement by giving written notice to Consultant of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by Consultant shall, at the option of the City, become the property of the City, and Consultant shall be entitled to receive just and equitable compensation, in an amount not to exceed that payable under this Agreement and less any damages caused City by Consultant's breach, for any work satisfactorily completed on such documents and other materials up to the effective date of Notice of Termination.



B. **Termination of Agreement for Convenience of City.** City may terminate this Agreement at any time and for any reason, by giving specific written notice to Consultant of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished and unfinished documents and other materials described hereinabove shall, at the option of the City, become City's sole and exclusive property. If the Agreement is terminated by City as provided in this paragraph, Consultant shall be entitled to receive just and equitable compensation, in an amount not to exceed that payable under this Agreement, for any satisfactory work completed on such documents and other materials to the effective date of such termination. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this section.

#### ARTICLE VII. RECORD RETENTION AND ACCESS

- A. **Record Retention.** During the course of the Project and for three (3) years following completion, the Consultant agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the Project as City may require.
- B. **Access to Records of Consultant and Subcontractors.** The Consultant agrees to permit, and require its subcontractors to permit City or its authorized representatives, upon request, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project.
- C. **Project Closeout.** The Consultant agrees that Project closeout does not alter the reporting and record retention requirements of this Agreement.

#### ARTICLE VIII. PROJECT COMPLETION, AUDIT, AND CLOSEOUT

- A. **Project Completion.** Within ninety (90) calendar days following Project completion or termination by City, Consultant agrees to submit a final certification of Project expenses and audit reports, as applicable.
- B. **Audit of Consultants.** Consultant agrees to perform financial and compliance audits the City may require. The Consultant also agrees to obtain any other audits required by City. Consultant agrees that Project closeout will not alter Consultant's audit responsibilities. Audit costs are allowable Project costs.
- C. **Project Closeout.** Project closeout occurs when City notifies the Consultant that City has closed the Project, and either forwards the final payment or acknowledges that the Consultant has remitted the proper refund. The Consultant agrees that Project closeout by City does not invalidate any continuing requirements imposed by the Agreement or any unmet requirements set forth in a written notification from City

#### ARTICLE IX. MISCELLANEOUS PROVISIONS

- A. **Assignability.** The services of Consultant are personal to the City, and Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without prior written consent of City.
1. **Limited Consent.** City hereby consents to the assignment of the portions of the Defined Services identified in Exhibit A, Paragraph 16 to the subconsultants identified as "Permitted Subconsultants."
- B. **Ownership, Publication, Reproduction and Use of Material.** All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced under this Agreement shall be the sole and exclusive property of City. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express written consent of City. City shall have unrestricted authority to publish, disclose (except as may be limited by the provisions of the Public Records Act), distribute, and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.
- C. **Independent Contractor.** City is interested only in the results obtained and Consultant shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. City maintains the right only to reject or accept Consultant's work products. Consultant and any of the Consultant's agents, employees or representatives are, for all purposes under this Agreement, independent contractors and shall not be deemed to be employees of City, and none of them shall be entitled to any benefits to which City employees are entitled including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits. Therefore, City will not withhold state or federal income tax, social security tax or any other payroll tax, and Consultant shall be solely responsible for the payment of same and shall hold the City harmless with regard to them.
1. **Actions on Behalf of City.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever, as an agent or otherwise. Consultant shall have no authority, express or implied, to bind City or its members, agents, or employees, to any obligation whatsoever, unless expressly provided in this Agreement.
  2. **No Obligations to Third Parties.** In connection with the Project, Consultant agrees and shall require that its agents, employees, subcontractors agree that City shall not be responsible for any obligations or liabilities to any third party, including its agents, employees, subcontractors, or other person or entity that is not a party to this Agreement. Notwithstanding that City may have concurred in or approved any solicitation, subagreement, or third party contract at any tier, City shall have no obligation or liability to any person or entity not a party to this Agreement.

- D. **Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement, against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same. Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.
- E. **Administration of Contract.** Each party designates the individuals (Contract Administrators) indicated on Exhibit A, Paragraph 12, as that party's contract administrator who is authorized by the party to represent it in the routine administration of this Agreement.
- F. **Term.** This Agreement shall terminate when the parties have complied with all executory provisions hereof.
1. Extension of Term. This Agreement, upon the mutual consent of the City Engineer and the Contractor, may be extended to inspect additional sewer manholes based on the same terms and conditions herein and at the unit costs identified in Exhibit A, section 10(B)(1).
- G. **Statement of Costs.** In the event that Consultant prepares a report or document, or participates in the preparation of a report or document in performing the Defined Services, Consultant shall include, or cause the inclusion of, in the report or document, a statement of the numbers and cost in dollar amounts of all contracts and subcontracts relating to the preparation of the report or document.
- H. **Consultant is Real Estate Broker and/or Salesman.** If the box on Exhibit A, Paragraph 15 is marked, the Consultant and/or its principals is/are licensed with the State of California or some other state as a real estate broker or salesperson. Otherwise, Consultant represents that neither Consultant, nor its principals are licensed real estate brokers or salespersons.
- I. **Notices.** All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement as the places of business for each of the designated parties.
- J. **Integration.** This Agreement, together with any other written document referred to or contemplated in it, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision of it may be amended, modified, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.
- K. **Capacity of Parties.** Each signatory and party to this Agreement warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter

into this Agreement, and that all necessary resolutions or other actions have been taken so as to enable it to enter into this Agreement.

- L. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance under it, shall be the City of Chula Vista.

**(End of page. Next page is signature page.)**

**Signature Page**  
**to**  
**Agreement between**  
**City of Chula Vista**  
**and Professional Pipe Services to Provide**  
**Sewer Manhole Inspection and Evaluation Services**

IN WITNESS WHEREOF, City and Consultant have executed this Agreement, indicating that they have read and understood same, and indicate their full and complete consent to its terms:

City of Chula Vista

By: \_\_\_\_\_  
**Cheryl Cox, Mayor**

Attest:

\_\_\_\_\_  
Donna Norris, City Clerk

Approved as to form:

\_\_\_\_\_  
Glen R. Googins, City Attorney

**Professional Pipe Services**

By: \_\_\_\_\_  
  
**Mark Metcalfe**  
**Vice President of Operations**

Exhibit List to Agreement: Exhibit A

**Exhibit A**  
**To**  
**Agreement between**  
**City of Chula Vista**  
**and Professional Pipe Services to Provide**  
**Sewer Manhole Inspection and Evaluation Services**

1. Effective Date: The Agreement shall take effect upon full execution of the Agreement, as of the effective date stated on page 1 of the Agreement.

2. City-Related Entity:

City of Chula Vista, a municipal chartered corporation of the State of California

The Chula Vista Public Financing Authority, a  
\_\_\_\_\_

The Chula Vista Industrial Development Authority, a  
\_\_\_\_\_

Other: \_\_\_\_\_, a [insert business form]

(City)

3. Place of Business for City:

City of Chula Vista  
276 Fourth Avenue, Building B  
Chula Vista, CA 91910

4. Consultant:

**Professional Pipe Services (PPS)**

5. Business Form of Consultant:

Sole Proprietorship

Partnership

Corporation

6. Place of Business, Telephone and Fax Number of Consultant:

249 S. Paseo Tesoro,  
Walnut CA 91789  
Telephone: 562-572-8521  
Email: [Spowers@hswcorp.com](mailto:Spowers@hswcorp.com)  
Website: [www.pro-pipe.com](http://www.pro-pipe.com)

## 7. General Duties:

PPS shall inspect and evaluate conditions of sewer manholes in the City of Chula Vista as a part of an overall asset management program for the wastewater collection system. Currently there are over 12,000 sewer manholes in the City of Chula Vista. An ongoing inspection and evaluation program is needed for the Asset Management Program and to prioritize the Capital Improvement Program for rehabilitating these sewer manholes.

The contracted amount for this contract shall not exceed \$300,000 for fiscal year 2013-2014. The number of manholes to be inspected shall be 3,333 manholes based on PPS unit price of \$90 per each manhole. Contractor and Staff agreed that the City may exert the option of requesting additional manholes to be inspected beyond the contracted amount of \$300,000 at the unit price of \$90.00 per manhole.

### **Project Background & Summary**

PPS shall inspect and evaluate the sewer manholes to determine the detailed condition and to collect data of every notable feature, defect, or other important information. The inspection shall be completed in a two-step process consisting of: 1-Data Collections and Data Review, 2-Reporting, and Delivery. PPS must perform a quality inspection utilizing a digital manhole inspection system that can provide superior imagery and geometric data as compared to traditional methods.

## 8. Scope of Work and Schedule

### A. Detailed Scope of Work:

**All work associated with this contract is to be completed no later than June 27, 2014**

The inspection shall include the following tasks and specifications:

#### **Task No.1: Data Collections**

- a. The inspection shall be performed with a 100% digital camera system. Any analog or NTSC video camera will be deemed unacceptable.
- b. The inspection camera system must have two independently controlled or simultaneously controlled digital cameras, one facing in the downward direction and one facing in the upward direction. Each camera must have a minimum of 185 degree field of view.
- c. The inspection camera system must illuminate the interior of the manhole using a xenon strobe light which will be positioned 360 degrees around the camera lens to distribute the light evenly onto the structure walls. The lighting must be able to illuminate manholes up to 10 feet (120 inches) in diameter without the need of any auxiliary lighting. Any

systems not using strobe light technology will be deemed unacceptable due to motion blur during imaging recording.

- d. The inspection system shall produce individual images or frames with no more than 0.001 inches of movement during image or frame exposure to produce crisp, clear images.
- e. The inspection camera must provide a minimum of 3000 line of vertical resolution in the side view and a minimum of 500 lines in the perspective view.
- f. The system must be capable of inspection speeds of 14 inches per second to ensure maximum production per day with each inspection system and to minimize the time at each location to maintain traffic flow and reduce safety concerns of PPS employees.
- g. Collected digital film files and header files shall be recorded onto a hard drive and original un-edited data shall be archived for a minimum of 5 years after project completion in the event the City request copies for internal use.

#### **Task No.2: Data Review, Reporting, and Delivery**

- a. PPS is responsible for reviewing collected data, coding observations, and completing a full Manhole Assessment & Certification Program (MACP) evaluation of each inspected manhole. In addition, PPS must provide the City with all the necessary software to have the ability to view the digital film file in the way that the PPS can view them, including full control of the virtual pan and tilt.
- b. The digital film files must include an unfolded view of the manhole with a minimum of 3000 lines of vertical resolution.
- c. The digital film files must include the capability of producing a three dimensional representation of the manhole structure. This data shall be used to perform geometric measurements. This file shall be exportable to common CAD programs for further analysis.
- d. The digital files must include a distortion-free virtual pan and tilt allowing the review of the manhole structure from any angle from any depth. The virtual pan and tilt must be able to view 360 degrees in any direction. The virtual pan and tilt must consist of views from the top and bottom camera, any virtual pan and tilts that artificially create this view from a single camera will be deemed unacceptable due to distorted images on the direct side view.
- e. The virtual pan and tilt and up/down direction of the view must be able to be controlled from a computer mouse.
- f. The virtual pan and tilt and unfolded views must be able to be viewable by the City without the need of any third party data logging software.
- g. PPS must review the film files using MACP certified personnel.
- h. PPS must supply the City with two sets of single or dual layer DVDs, a removable hard drive, or other pre-approved media with the data and reports.



- i. All deliverables must be supplied to the City within 5 days of completion of fieldwork.
- j. The number of manholes to be inspected under this contract shall be based on the \$300,000 limited contracted amount and should be calculated based the contracted unit price of \$90.00 for inspecting each manhole including all related works to complete the contract.

**Task 3 Field Supervision and Traffic Control**

- a. PPS shall provide proper supervision at the job site during all phases of work and shall be responsible for coordinating the work to be done including traffic control. Work could take place in alley's, yards, parking lots, drainage channels, and major busy streets. The Contractor shall provide copies of all applicable licenses and permits for administering the traffic control and inspecting the sewer manholes as required by the State and the City.
- b. Traffic control shall be administered to the satisfaction of the City of Chula Vista Traffic Division. Prior to start the manhole inspection, PPS shall obtain a signed approval of City of Chula Vista, Traffic Division for typical traffic control plans for this project.
- c.

**Task 4. Marking Manhole Covers of all Inspected Manholes**

The contractor shall mark each manhole cover with a plus Sign (+) with a permanent, weatherproof, and distinctive green color markers to be approved by the City, identifying all manholes that were inspected. The plus sign (+) should be no smaller than 4" and no bigger than 6".

**Task 5. Mapping and Billing**

The City shall provide PPS with maps outlining and listing the manholes to be inspected, a database of all the manholes to be inspected, and a GIS shapefile. When submitting invoices, PPS shall mark these maps and shall submit log sheets listing identification number of the inspected manhole, manhole's location, size of manhole, type of manhole wall (concrete or brick), date of inspection, and names of personnel who did the work.

**B. Date for Commencement of Consultant Services:**

Same as Effective Date of Agreement

Other: \_\_\_\_\_

**C. Dates or Time Limits for Delivery of Deliverables:**

Deliverable No. 1: Marked maps , DXF file, and spread sheet showing all inspected Manholes.

Deliverable No. 2: Digital and hard copy reports that include a Complete and a full Manhole Assessment & Certification Program (MACP) evaluation of

each inspected manhole. Pipelagic Manhole Inspection Viewer (at no cost to the City) with one manhole inspection per viewer, PDF Reports

Deliverable No. 3: All items listed in Section 8, Task No.1 and Task No.2.

D. Date for completion of all Consultant services: June 27, 2014.

9. Materials Required to be Supplied by City to Consultant:

10. Compensation:

A. ( ) Single Fixed Fee Arrangement.

For performance of all of the Defined Services by Consultant as herein required, City shall pay a single fixed fee in the amounts and at the times or milestones or for the Deliverables set forth below:

Single Fixed Fee Amount: \_\_\_\_\_, payable as follows:

<u>Milestone or Event or Deliverable</u>	<u>Amount or Percent of Fixed Fee</u>
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( ) 1. Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 19 is to be applied to each interim payment such that, at the end of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Consultant shall have represented in writing that said percentage of completion of the phase has been performed by the Consultant. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

B. ( ) Phased Fixed Fee Arrangement.

For the performance of each phase or portion of the Defined Services by Consultant as are separately identified below, City shall pay the fixed fee associated with each phase of Services, in the amounts and at the times or milestones or Deliverables set forth. Consultant shall not

commence Services under any Phase, and shall not be entitled to the compensation for a Phase, unless City shall have issued a notice to proceed to Consultant as to said Phase.

<u>Phase</u>	<u>Fee for Said Phase</u>
1.	\$ _____
2.	\$ _____
3.	\$ _____

( ) 1. Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 18 is to be applied to each interim payment such that, at the end of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Consultant shall have represented in writing that said percentage of completion of the phase has been performed by the Consultant. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

C. ( ) Hourly Rate Arrangement

For performance of the Defined Services by Consultant as herein required, City shall pay Consultant for the productive hours of time spent by Consultant in the performance of said Services, at the rates or amounts set forth in the Rate Schedule herein below according to the following terms and conditions:

D. (X) Not-to-Exceed Arrangement

(1) (X) Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum Compensation amount, Consultant agrees that Consultant will perform all of the Defined Services herein required of Consultant for \$300,000, including all Materials, and other "reimbursables" (Maximum Compensation).

(2) (X) Based on Unit Costs:

The total compensation due to the Contractor, which in no event shall exceed the Not To Exceed amount identified above, shall be based on a unit cost of \$90.00 per manhole for

Fiscal Year 2014, defined in Section 8-A. In the event that the term of this agreement is extended pursuant to Article IX, Section F above, the unit costs (\$/manhole to be inspected and evaluated )

(3) ( ) Limitation without Further Authorization on Time and Materials Arrangement

At such time as Consultant shall have incurred time and materials equal to \$ \_\_\_\_\_ (Authorization Limit), Consultant shall not be entitled to any additional compensation without further authorization issued in writing and approved by the City. Nothing herein shall preclude Consultant from providing additional Services at Consultant's own cost and expense. See Exhibit B for wage rates.

( ) Hourly rates may increase by 6% for services rendered after [month], 20\_\_\_\_, if delay in providing services is caused by City.

11. Materials Reimbursement Arrangement

For the cost of out of pocket expenses incurred by Consultant in the performance of services herein required, City shall pay Consultant at the rates or amounts set forth below:

(X) None, the compensation includes all costs.

	Cost or Rate
( ) Reports, not to exceed \$ _____ :	\$ _____
( ) Copies, not to exceed \$ _____ :	\$ _____
( ) Travel, not to exceed \$ _____ :	\$ _____
( ) Printing, not to exceed \$ _____ :	\$ _____
( ) Postage, not to exceed \$ _____ :	\$ _____
( ) Delivery, not to exceed \$ _____ :	\$ _____
( ) Outside Services:	\$ _____
( ) Other Actual Identifiable Direct Costs:	\$ _____
_____ , not to exceed \$ _____ :	\$ _____
_____ , not to exceed \$ _____ :	\$ _____

12. Contract Administrators:

City: Jamal Naji, Associate Civil Engineer, City of Chula Vista  
 Address: 276 Fourth Avenue, Building B  
 Chula Vista, CA 91910  
 Office: (619) 409-5921  
 Email: [jnaji@chulavistaca.gov](mailto:jnaji@chulavistaca.gov)

Consultant: Steve Powers, Branch Manager, Professional Pipe Services  
Address: 249 S. Paseo Tesoro,  
Walnut CA 91789  
Cell: (562)572-8521  
Office: (909) 598-9743  
Email: Spowers@hswcorp.com

13. Liquidated Damages Rate:

- \$ \_\_\_\_\_ per day.  
 Other: \_\_\_\_\_

14. Statement of Economic Interests, Consultant Reporting Categories, per Conflict of Interest Code (Chula Vista Municipal Code chapter 2.02):

Not Applicable. Not an FPPC Filer.

FPPC Filer

- Category No. 1. Investments, sources of income and business interests.
- Category No. 2. Interests in real property.
- Category No. 3. Investments, business positions, interests in real property, and sources of income subject to the regulatory, permit or licensing authority of the department administering this Agreement.
- Category No. 4. Investments and business positions in business entities and sources of income that engage in land development, construction or the acquisition or sale of real property.
- Category No. 5. Investments and business positions in business entities and sources of income that, within the past two years, have contracted with the City of Chula Vista or the City's Redevelopment Agency to provide services, supplies, materials, machinery or equipment.
- Category No. 6. Investments and business positions in business entities and sources of income that, within the past two years, have contracted with the department administering this Agreement to provide services, supplies, materials, machinery or equipment.
- List Consultant Associates interests in real property within 2 radial miles of Project Property, if any:
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15. ( ) Consultant is Real Estate Broker and/or Salesman

16. Permitted Subconsultants:

17. Bill Processing:

A. Consultant's Billing to be submitted for the following period of time:

- (X) Monthly
- ( ) Quarterly
- ( ) Other: \_\_\_\_\_

B. Day of the Period for submission of Consultant's Billing:

- ( ) First of the Month
- ( ) 15th Day of each Month
- ( ) End of the Month
- ( ) Other: \_\_\_\_\_

C. City's Account Number: **[TO BE ASSIGNED]**

18. Security for Performance

- ( ) Performance Bond, \$ \_\_\_\_\_
- ( ) Letter of Credit, \$ \_\_\_\_\_
- ( ) Other Security:

Type: \_\_\_\_\_

Amount: \$ \_\_\_\_\_

- ( ) Retention. If this space is checked, then notwithstanding other provisions to the contrary requiring the payment of compensation to the Consultant sooner, the City shall be entitled to retain, at their option, either the following "Retention Percentage" or "Retention Amount" until the City determines that the Retention Release Event, listed below, has occurred:

( ) Retention Percentage: \_\_\_\_\_

( ) Retention Amount: \$ \_\_\_\_\_

Retention Release Event:

( ) Completion of All Consultant Services

( ) Other: \_\_\_\_\_

( ) Other: The Retention Amount may be released on a monthly basis provided that Consultant has performed said monthly services to the sole satisfaction of the Assistant City Manager/Director of Development Services or his designee.

## Exhibit B



# INSURANCE REQUIREMENTS FOR CONTRACTORS/SERVICE PROVIDERS

### (Not for Professional Services or Construction Contracts)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

### MINIMUM SCOPE AND LIMIT OF INSURANCE

#### Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. *(If applicable – see footnote next page)*

If the contractor maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor.

#### Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### *Additional Insured Status*

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or



if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used). Specifically, endorsement must not exclude Products / Completed Operations.

### ***Primary Coverage***

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

### ***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

### ***Waiver of Subrogation***

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

### ***Claims Made Policies***

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5) years*** after completion of work.

### ***Verification of Coverage***

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning

shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

***Special Risks or Circumstances***

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.