

**CONTRACT FOR CONSULTANT SERVICES BETWEEN
THE CITY OF WATSONVILLE AND TELSTAR INSTRUMENTS**

THIS CONTRACT, is made and entered into this 27th day of April, 2021 by and between the **City of Watsonville**, a municipal corporation, hereinafter called "City," and **TELSTAR INSTRUMENTS**, hereinafter called "Consultant."

WITNESSETH

WHEREAS, the City needs to obtain certain professional, technical and/or specialized services of an independent contractor to assist the City in the most economical manner; and

WHEREAS, Consultant has represented that consultant has appropriate skill, training, qualifications, and experience to render such services called for under this Contract to City.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES. Consultant shall perform those services described in detail in Exhibit "A," entitled "SCOPE OF SERVICES" which exhibit is attached hereto and incorporated herein.

SECTION 2. TERM OF CONTRACT. The term of this Contract shall be from May 25th, 2021 to May 25th, 2024, inclusive.

SECTION 3. SCHEDULE OF PERFORMANCE. The services of Consultant are to be completed according to the schedule set out in Exhibit "B," entitled "SCHEDULE OF PERFORMANCE," which is attached hereto and incorporated herein. Consultant will diligently proceed with the agreed Scope of Services and will provide such services in a timely manner in accordance with the "SCHEDULE OF PERFORMANCE."

SECTION 4. COMPENSATION. The compensation to be paid to Consultant including both payment for professional services and reimbursable expenses as well as the rate and schedule of payment are set out in Exhibit "C" entitled "COMPENSATION," which is attached hereto and incorporated herein. This amount shall not exceed \$655,000.00.

SECTION 5. METHOD OF PAYMENT. Except as otherwise provided in Exhibit "C," each month, Consultant shall furnish to the City a statement describing the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

SECTION 6. INDEPENDENT CONSULTANT. It is understood and agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent Consultant and not an agent or

employee of City, and as an independent Consultant, shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY. Consultant shall not assign or transfer any interest in this Contract nor the performance of any of Consultant's obligations hereunder, without the prior written consent of City, and any attempt by Consultant to so assign this Contract or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION. Consultant represents that Consultant has the expertise and experience necessary to perform the services and duties agreed to be performed by Consultant under this Contract, and City is relying upon the skill and knowledge of Consultant to perform said services and duties. Consultant agrees to defend, indemnify and hold harmless City, its officers, agents, and employees, against any loss or liability arising out of or resulting in any way from work performed by or on behalf of Consultant under this Contract or the errors or omissions by Consultant.

SECTION 9. INSURANCE.

A. Auto and Commercial General Liability Insurance. Consultant shall also maintain in full force and effect for the term of this Contract, automobile insurance and commercial general liability insurance with an insurance carrier satisfactory to City, which insurance shall include protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any actual occurrence arising out of the performance of this Contract. The amounts of insurance shall not be less than the following:

(1) Commercial general liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, such limit shall apply separately to each project Consultant performs for City. Such insurance shall (a) name City, its appointed and elected officials, and its employees as insureds; and (b) be primary with respect to insurance or self-insurance programs maintained by City and (c) contain standard separation of insured's provisions.

(2) Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000.00 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

B. Workers' Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, Consultant shall be insured against liability for Workers' Compensation or undertake self-insurance. Consultant agrees to comply with such provisions before commencing performance of any work under this Contract.

C. Proof of Insurance to City before Notice to Proceed to Work. Consultant shall satisfactorily provide certificates and endorsements of insurance to the City Clerk before Notice to Proceed to Work of this Contract will be issued. Certificates and policies shall state that the policy shall not be canceled or reduced in coverage without thirty (30) days written notice to City. Approval of insurance by City shall not relieve or decrease the extent to which Consultant may be held responsible for payment of damages resulting from services or operations performed pursuant to this Contract. Consultant shall not perform any work under this Contract until Consultant has obtained the required insurance and until the required certificates have been submitted to the City and approved by the City Attorney. If Consultant fails or refuses to produce or maintain the insurance required by these provisions, or fails or refuses to furnish City required proof that insurance has been procured and is in force and paid for, City shall have the right at City's election to forthwith terminate this Contract immediately without any financial or contractual obligation to the City. As a result of such termination, the City reserves the right to employ another consultant to complete the project.

D. Written notice. Contractor shall provide immediate written notice if (1) any insurance policy required by this Contract is terminated; (2) any policy limit is reduced; (3) or any deductible or self insured retention is increased.

SECTION 10. NON-DISCRIMINATION. Consultant shall not discriminate, in any way, against any person on the basis of age, sex, race, color, creed, national origin, or disability in connection with or related to the performance of this Contract.

SECTION 11. TERMINATION.

A. City and Consultant shall have the right to terminate this Contract, without cause, by giving not less than ten (10) days written notice of termination.

B. If Consultant fails to perform any of its material obligations under this Contract, in addition to all other remedies provided by law, City may terminate this Contract immediately upon written notice.

C. The City Manager is empowered to terminate this Contract on behalf of City.

D. In the event of termination, Consultant shall deliver to City copies of all work papers, schedules, reports and other work performed by Consultant and upon receipt thereof, Consultant shall be paid in full for services performed and reimbursable expenses incurred to the date of termination.

E. In the event of termination by City, City agrees to compensate consultant based on percent of completion up to date of completion.

SECTION 12. COMPLIANCE WITH LAWS. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Consultant shall obtain and maintain a City of Watsonville business license during the term of this Contract.

SECTION 13. GOVERNING LAW. City and Consultant agree that the law governing this Contract shall be that of the State of California. Any suit brought by either party against the other arising out of the performance of this Contract shall be filed and maintained in the Courts of the County of Santa Cruz.

SECTION 14. PRIOR CONTRACTS AND AMENDMENTS. This Contract represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Contract may only be modified by a written amendment.

SECTION 15. CONFIDENTIAL INFORMATION. Except as may be required by law, all data, documents, discussions, or other information developed or received by or for Consultant in performance of this Contract are confidential and not to be disclosed to any person except as authorized by the City Manager.

SECTION 16. OWNERSHIP OF MATERIALS. All reports, documents or other materials developed or received by Consultant or any other person engaged directly by Consultant to perform the services required hereunder shall be and remain the property of City without restriction or limitation upon their use.

SECTION 17. COVENANT AGAINST CONTINGENT FEES. The Consultant covenants that Consultant has not employed or retained any company or person to solicit or secure the Contract, and that Consultant has not paid or agreed to pay any company or person, any fees, commissions, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Contract. For breach or violation of this covenant, the City shall have the right to annul this Contract without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

SECTION 18. WAIVER. Consultant agrees that waiver by City or any one or more of the conditions of performance under this Contract shall not be construed as waiver of any other condition of performance under this Contract.

SECTION 19. CONFLICT OF INTEREST.

A. A Consultant shall avoid all conflict of interest or appearance of conflict of interest in performance of this Contract. Consultant shall file a FPPC Form 700

disclosure statement, which form shall be filed with the City Clerk within thirty (30) days from the effective date of this Contract as applicable.

B. No member, officer, or employee of the City, during their tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in this Contract or the proceeds thereof and Consultant agrees not to allow, permit, grant, transfer, or otherwise do anything which will result in such member, officer, or employee of the City from having such interest.

SECTION 20. AUDIT BOOKS AND RECORDS. Consultant shall make available to City, its authorized agents, officers and employees, for examination any and all ledgers and books of account, invoices, vouchers, canceled checks and other records or documents evidencing or related to the expenditures and disbursements charged to the City, and shall furnish to City, its authorized agents and employees, such other evidence or information as City may require with respect to any such expense or disbursement charged by Consultant.

SECTION 21. NOTICES. All notices shall be personally served or mailed, postage prepaid, to the following addresses, or to such other address as may be designated by written notice by the parties:

CITY

City Clerk's Office
275 Main Street, Suite 400
Watsonville, CA 95076
(831) 768-3040

CONSULTANT

Consultant Instruments
1717 Solano Way, Unit 34
Concord, CA 94520
(925) 671-2888

SECTION 22. EXHIBITS:

Exhibit A: Scope of Services
Exhibit B: Schedule of Performance
Exhibit C: Compensation

///

///

///

WITNESS THE EXECUTION HEREOF, on the day and year first hereinabove written.

CITY

CONSULTANT

CITY OF WATSONVILLE

BY _____
Matthew D. Huffaker, City Manager

BY  _____
Tammy Misenhimer, Contract Administrator

ATTEST:

BY _____
Beatriz Vázquez Flores, City Clerk

APPROVED AS TO FORM:

BY _____
Alan J. Smith, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

SCOPE OF SUPPLY TASK 1: WASTEWATER AND COLLECTIONS SYSTEM WONDERWARE UPGRADE: HARDWARE PROCUREMENT

1. Consultant will procure Lenovo rack mounted servers, network storage, network switches, and a management workstation for the Wastewater and Collections System applications. Equipment will have specifications equivalent or better than those provided in sections 15.1.1 – 15.1.9 of the Wonderware System Function Specification, Publish Date 2/24/2021. Hardware procured by Consultant will include the following.
 - a. Quantity (2) Lenovo SR650 2X6230 12X32GB servers with 5-year extended service agreement.
 - b. Quantity (1) Nimble HF20 Storage Array HF20/20C Adaptive Array 21TB (21x1TB) FIO HDD Bundle detail below with 5-year manufacturer support.
 Quantity 1 HPE NS HF20 HYBRID CTO BASE ARRAY
 Quantity 1 HPE NS HF20/20C HYBRID 21TB FIO HDD BNDL
 Quantity 1 HPE NS 2X10GBE 2P FIO ADPTR KIT
 Quantity 2 HPE NS C13 TO C14 FIO POWER CORD
 Quantity 1 HPE NS HF20 R2 2.88TB FIO CACHE BNDL
 Quantity 1 HPE NS AF/HF ARRAY STANDARD TRK
 - c. Quantity (2) Ruckus Brocade ICX7450 48 port switches with Brocade ICX 7450 4-port 1/10 GbE SFP/SFP+ module with link, ICX 7450/6610 backup power supply, (4) Twinax Copper Cables to Connect Host's SFP+ ports to ICX7450 Switches, (4) Twinax Copper Cables to Connect Nimble Controller SFP+ ports to ICX7450 Switches, (8) SFP-1GB Modules with RJ-45 Copper Port and 5-year manufacturer support.
 - d. Quantity (32) Microsoft Windows Server 2019 Datacenter - (2 Core license Pack).
 - e. Quantity (3) Microsoft Office Standard 2019 - license - 1 PC.
 - f. Quantity (1) VMware vSphere Enterprise Plus Acceleration Kit (v. 7) - license – 6 processor licenses.
 - g. Quantity (1) VMware vSphere Enterprise Plus Support and Subscription Production - technical support for 3 years.
 - h. Quantity (2) Win911-GrandStream Ethernet modem.
 - i. Quantity (2) WIN-911 Interactive software licenses upgrade.
 - j. Quantity (2) Kepware IO Server Software for Modbus & AB Suite.

2. The existing City's server rack and UPS will be used, so these items are excluded from this quotation.

Lump Sum Price for this Scope of Supply Task 1 \$230,971.00

Shipping and Handling for Consultant Supplied Materials IS INCLUDED

Sales Tax IS INCLUDED

**SCOPE OF SERVICES TASK 2: WASTEWATER AND COLLECTIONS SYSTEM
WONDERWARE UPGRADE: APPLICATION CONVERSION**

3. Consultant will configure new server hardware procured under Task 1. Consultant will install and configure VMware and Microsoft software on the new server hardware.
4. Consultant will install and configure Wonderware 2020, WIN-911 Interactive, and Kepware software on the new server hardware. Licensing costs for upgrade of the existing Wonderware is excluded from this quotation. Licensing costs for WIN-911 Interactive upgrade & Kepware I/O server software is included in this quotation.
5. Consultant will merge the existing wastewater treatment and wastewater collection system Wonderware applications into one application. The merged application will be converted from Wonderware 9.5 to Wonderware 2020. The applications will be converted as-is, with no functionality or graphic screen upgrades. This scope does not include additional SCADA or PLC programming to add functionality to the system. Upgrade to ArchestrA / Industrial graphical objects is excluded from this quotation.
6. The existing I/O drivers are obsolete. Consultant will furnish, install, and configure new Kepware server I/O drivers on the new servers for Modbus suite and Allen Bradley suite protocols.
7. Consultant will convert the existing wastewater treatment Historian application to Wonderware 2020. The Historian will be converted as-is with the classic tag database and functionality. Tags for the wastewater collection application will be added to the Historian database. Historian redundancy will be added to the application once conversion is complete.
8. Consultant will convert the existing WIN-911 legacy v7 application to WIN-911 Interactive. The application will be converted as-is, with no functionality upgrades. Consultant will furnish, install, and test two (2) new WIN-911 modems to provide redundancy for the software application.
9. Consultant will maintain existing connectivity and data transfer between the Wonderware application and Hach WIMS. Creation of new or additional reports is not included in this quotation.
10. Consultant will perform configuration of the new servers and conversion of the Wonderware applications at our Sacramento office. Once the servers are configured and the Wonderware applications have been tested, Consultant will

schedule Factory acceptance test at the Consultant facility for the SCADA hardware and software demonstration.

After the FAT approval, Consultant will install the rack mount servers at the City's facility. Consultant will require assistance from City IT to put the new servers on the City's directory domain. City IT will be responsible for adding all servers to the existing active directory domain. Consultant will deploy and field test the new SCADA system.

Lump Sum Price for this Scope of Services Task 2 \$131,928.00
Shipping and Handling for Consultant Supplied Materials IS INCLUDED
Sales Tax IS INCLUDED

**SCOPE OF SERVICES TASK 3: WATER SYSTEM WONDERWARE UPGRADE:
APPLICATION CONVERSION**

- 11. Consultant will install and configure Wonderware 2020, new WIN-911, and Kepware software on VMs provided to Consultant on existing City servers. Licensing costs for Wonderware is excluded from this quotation. Licensing costs for WIN-911 and Kepware I/O server software is included in this quotation.
- 12. Hardware and software procured by Consultant will include the following
 - a. Quantity (2) Win911-GrandStream Ethernet modem.
 - b. Quantity (2) Kepware IO Server Software for Modbus & AB Suite.
 - c. Quantity (2) new WIN-911 Interactive software licenses.
- 13. Consultant will convert the existing water system application from Wonderware 2014r2 to Wonderware 2020. The application will be converted as-is, with no functionality or graphic screen upgrades. This scope does not include additional SCADA or PLC programming to add functionality to the system. Upgrade to ArchestrA / Industrial graphical objects is excluded from this quotation.
- 14. The existing I/O drivers are obsolete. Consultant will furnish, install, and configure new Kepware server I/O drivers on the City provided VM servers for Modbus suite and Allen Bradley suite protocols.
- 15. Consultant will convert the existing water system Historian application to Wonderware 2020. The Historian will be converted as-is with the classic tag database and functionality. Historian redundancy will be added to the application once conversion is complete.
- 16. Consultant will convert the existing TopView application to WIN-911 Interactive. The application will be converted as-is, with no functionality upgrades. Consultant will furnish and install two (2) new WIN-911 modems to provide redundancy for the software application. WIN-911 Interactive licenses are provided by Consultant.
- 17. Reporting is currently performed using the Wonderware Excel utility add-on. Consultant will upgrade the utility and convert and test the 3 reports as-is to the

latest version of the utility. Creation of new or additional reports is not included in this quotation.

18. Consultant will deploy and field test the new SCADA system on the City provided VMs.

Lump Sum Price for this Scope of Services Task 3..... \$99,872.00

Shipping and Handling for Consultant Supplied Materials IS INCLUDED

Sales Tax IS INCLUDED

SCOPE OF SERVICES TASK 4: SCADA SYSTEM CYBERSECURITY DESIGN PLAN (FUTURE TASK)

Consultant will develop a cybersecurity design plan where your existing systems are reviewed and assessed for vulnerabilities. Recommendations on improvements to address any security gaps will be prepared. Consultant will coordinate with City IT for cybersecurity to develop the final task scope from the items below.

19. Data Collection: The proposed approach includes data collection activities to solidify understanding of existing architecture and network configuration. Data collection to include a combination of onsite identification, network captures, and stakeholder interviews. It is understood that stakeholder time is limited and valuable, and efforts will be made to plan accordingly to make these activities as efficient as possible.
20. Existing Architecture Drawings: Information from data collection activities will drive a unified set of drawings that capture the existing architecture in a modern format, including VLANs and physical/virtual details. This information provides a basis for design modifications and will be crucial in collaborative discussions with project stakeholders from the design phase through implementation and beyond.
21. Cybersecurity Controls Gap Assessment and Architecture Review: A Cybersecurity controls assessment will be performed on the existing architecture baseline compared to the appropriate benchmark controls relative to water and wastewater systems in mixed OT/IT environments. An architecture review will compare industrial control system (ICS) reference architectures to align with current water and wastewater systems' best practices.
22. Recommendations to Address Gap: Architecture and configuration recommendations to address the gap will include relevance to new and existing equipment. Recommendations will be shared with the project team and adjusted as necessary based on this collaboration's result to produce a firm approach.
23. Proposed Architecture and Network Configuration: The existing architecture drawings will be updated to include the firm approach as the proposed design target for implementation. A summary of configuration recommendations will be included to complement the proposed architecture.
24. Summary TM: All information produced will be provided in a summary technical memorandum for implementation.

Lump Sum Price for this Scope of Services Task 4 \$44,850.00
Shipping and Handling for Consultant Supplied Materials IS INCLUDED
Sales Tax IS INCLUDED

SCOPE OF SERVICES TASK 5: WASTEWATER AND COLLECTIONS SYSTEM
WONDERWARE UPGRADE: Training & Additional programing

25. Consultant recognizes there are issues that the City would like to have fixed with the existing Wonderware applications. Consultant has allocated 160 hours of onsite training and programming in this quotation to improve or correct the existing wastewater and collection system application functionality once the upgrade is complete

Lump Sum Price for this Scope of Services Task 5 \$43,920.00
Shipping and Handling for Consultant Supplied Materials IS INCLUDED
Sales Tax IS INCLUDED

SCOPE OF SERVICES TASK 6: WATER SYSTEM WONDERWARE UPGRADE:
Training & Additional programing

26. Consultant recognizes there are issues that the City would like to have fixed with the existing Wonderware applications. Consultant has allocated 160 hours of onsite training and programming in this quotation to improve or correct the existing wastewater and collection system application functionality once the upgrade is complete

Lump Sum Price for this Scope of Services Task 6 \$43,920.00
Shipping and Handling for Consultant Supplied Materials IS INCLUDED
Sales Tax IS INCLUDED

This quotation is based on Customer’s representation that this IS a prevailing wage project.

CLARIFICATIONS, EXCEPTIONS, AND EXCLUSIONS

- a. Material price is valid for seven (7) days from date referenced on this quote (Refer to COVID clause RE: MATERIAL PRICING AND DELIVERY under Terms and Conditions). If material prices change between the date of this quotation and the date the orders are placed, the City will be notified of the price difference.
- b. Consultant’s quotation includes only those items listed above. Requests for additions/deletions from our scope will require a change in the quoted price.
- c. We assume no responsibility for performance, applicability, start-up, testing, or acceptance of any equipment not furnished by Consultant under this proposal.
- d. PLC programming and modifications are excluded.
- e. The City will provide all Wonderware licenses for this upgrade through their current support contract with Wonderware.

- f. Microsoft Remote desktop services device CAL licenses are excluded.
- g. City IT will provide secured remote access for Consultant to City SCADA servers for the Wonderware application configuration.
- h. Dream Report programming is excluded in this scope. Development of reports using Dream Reports can be provided on time and material basis on request.

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

Services shall commence immediately upon execution of this Contract. All services performed under the provisions of this Contract shall be completed in accordance with the following schedule: May 27th, 2021 through May 27th, 2024

EXHIBIT "C"

COMPENSATION

a. Total Compensation. The total obligation of City under this Contract shall not exceed \$655,000.00.

b. Basis for Payment. Payment(s) to Consultant for services performed under this contract shall be made as follows and shall [not] include payment for reimbursable expenses:

c. Payment Request. Consultant shall submit a request for payment for services on a monthly basis by letter to Director, or said Director's designated representative. Such request for payment shall cover the preceding monthly period during the term hereof, shall note the City's purchase order number for this contract, shall contain a detailed listing of the total number of items or tasks or hours for which payment is requested, the individual dates on which such services were rendered, and invoices for reimbursable expenses, if any. Upon receipt in the Office of Director of said payment request, Director shall cause payment to be initiated to Consultant for appropriate compensation.

d. Base Terms. Quotation is valid for 90 days from the date of Consultant's quotation. Payment is due and payable 30 days from date of invoice. If payment is not received by the 30th day, a .05% daily service charge (18-3/4% per annum) will be charged on all accounts past due. In the event of a dispute concerning payment, attorney's fees, court costs and costs of collection will be paid to the prevailing party. The cost for permits and bonding are excluded unless expressly referenced in Consultant's quotation. Our standard insurance applies unless agreed to in writing by Consultant. Consultant's standard one year parts only warranty applies to this quotation. All other warranties, express or implied, or referenced elsewhere in contract documents are excluded, including but not limited to implied warranties of merchantability or fitness for purpose. Unless expressly stated in Consultant's estimate, this quote is based on standard straight time hours and does not include any prevailing wage rates. The price quoted herein is for the labor and materials specifically listed within the body of this quote. Service calls are charged at a 4-hour minimum per person, excluding travel time. Unless expressly stated in the quotation, training, operation and maintenance manuals, and preparation of as built drawings are excluded from Consultant's scope of work.

e. Consultant's COVID and Industry Clause Re: Material Pricing and Delivery. Consultant is unable to hold prices on materials for more than 7 days. Prices for plastic, copper, steel, and other commodities fluctuate daily. Our vendors and manufacturers are experiencing unprecedented delays due to COVID-19 staffing, a shortage of containers, port congestion, and raw material shortages that have extended lead times significantly. Consultant reserves the right to amend the delivery date and the price of materials set forth in this quotation. Consultant considers any of the above related changes imposed by our vendors and manufacturers as outside its reasonable control.