

## **OWNER - CONTRACTOR AGREEMENT**

### **Police Pistol Range HVAC and Safety Improvements CIP NO. 20-05**

This Owner-Contractor Agreement ("Agreement") is made by and between the City of National City, 1243 National City Boulevard National City, California 91950 and **SWCS Inc. ("Contractor")**, 11653 Riverside Dr., Ste. 153, Lakeside, California 92040 on the **6<sup>th</sup> day of December, 2022**, for the construction of the above referenced Project.

In consideration of the mutual covenants and agreements set forth herein, the Owner and Contractor have mutually agreed as follows:

#### **1. CONSTRUCTION**

The Contractor agrees to do all the work and furnish all the labor, services, materials and equipment necessary to construct and complete the Project in a turn-key manner in accordance with this Agreement and all documents and plans referenced in Exhibit "A", (hereinafter "Contract Documents"), in compliance with all relevant Federal, State of California, County of San Diego and City of National City codes and regulations, and to the satisfaction of the Owner.

#### **2. CONTRACT PRICE**

Owner hereby agrees to pay and the Contractor agrees to accept as full compensation for constructing the project in accordance with these Contract Documents in an amount not to exceed the contract price as set forth in Exhibit "B" attached hereto and incorporated herein by reference. Payments to the Contractor shall be made in the manner described in the Special Provisions.

#### **3. TIME FOR PERFORMANCE**

Time is of the essence for this Agreement and the Contractor shall construct the project in every detail to a complete and turn-key fashion to the satisfaction of the Owner within the specified duration set forth in the Special Provisions.

#### **4. NON-DISCRIMINATION**

In the performance of this Agreement, the Contractor shall not refuse or fail to hire or employ any qualified person, or bar or discharge from employment any person, or discriminate against any person, with respect to such person's compensation, terms, conditions or privileges of employment because of such person's race, religious status, sex or age.

5. AUTHORIZED OWNER REPRESENTATIVES

On behalf of the Owner, the Project Manager designated at the pre-construction meeting shall be the Owner's authorized representative in the interpretation and enforcement of all Work performed in connection with this Agreement.

6. WORKERS' COMPENSATION INSURANCE

a) By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code, which requires 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 Agreement.

b) The Contractor shall require each subcontractor to comply with the requirements of Section 3700 of the Labor Code. Before commencing any Work, the Contractor shall cause each subcontractor to execute the following certification:

"I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for worker's 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 Agreement."

7. ENTIRE AGREEMENT; CONFLICT

The Contract Documents comprise the entire agreement between the Owner and the Contractor with respect to the Work. In the event of conflict between the terms of this Agreement and the bid of the Contractor, then this Agreement shall control and nothing herein shall be considered as an acceptance of the terms of the bid conflicting herewith.

8. MAINTENANCE OF AGREEMENT DOCUMENTATION

Contractor shall maintain all books, documents, papers, employee time sheets, accounting records and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by Owner and copies thereof shall be furnished to Owner if requested.

9. INDEPENDENT CONTRACTOR

At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee, agent, partner or joint venturer of the Owner. Owner shall have the right to control Contractor insofar as the results of Contractor's services rendered pursuant to this Agreement; however, Owner shall not have the right to control the means by which Contractor accomplishes such services.

10. LICENSES AND PERMITS

Contractor represents and declares to Owner that it has all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. Contractor represents and warrants to Owner that Contractor shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, qualifications or approvals which are legally required for Contractor to practice its profession.

11. GOVERNING LAW, VENUE

This Agreement and the Contract Documents shall be construed under and in accordance with the laws of the State of California, and the appropriate venue for any action or proceeding arising from this Agreement and/or the Contract Documents shall be had in the Superior Court of San Diego, Central Branch.

12. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original.

13. FALSE CLAIMS

Contractor acknowledges that if a false claim is submitted to the Owner, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the Owner seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

I have read and understood all of the provisions of this Section 15, above:

  
\_\_\_\_\_  
(Initial)

  
\_\_\_\_\_  
(Initial)

14. AGREEMENT MODIFICATION

This Agreement and the Contract Documents may not be modified orally or in any manner other than by an amendment in writing and signed by the Owner and the Contractor.

IN WITNESS WHEREOF this Agreement is executed as of the date first written above.

Owner:

Contractor:  
SWCS Inc.

\_\_\_\_\_  
Alejandra Sotelo-Solis  
Mayor, City of National City

  
\_\_\_\_\_  
(Owner/Officer signature)

Stephanie Smith, Vice President  
\_\_\_\_\_  
Print name and title

APPROVED AS TO FORM:

  
\_\_\_\_\_  
(Second officer signature if a corporation)

By: \_\_\_\_\_  
Barry Schultz  
Interim City Attorney

Gerald Smith, President  
\_\_\_\_\_  
Print name and title

09048019  
\_\_\_\_\_  
Contractor's City Business License No.

967347 - B, C9, C10, C20, C601/D28/D34  
\_\_\_\_\_  
State Contractor's License No. and Class

11053 Riverside pr. #153  
\_\_\_\_\_  
Business street address

LAKESIDE CA 92040  
\_\_\_\_\_  
City, State and Zip Code

## **EXHIBIT A**

### **CONTRACT DOCUMENTS**

Owner/Contractor Agreement

Bid Schedule

Addenda

Plans

Special Provisions (Specifications)

San Diego County Regional Standard Drawings

City of National City Standard Drawings

Standard Specifications for Public Works Construction and Regional Supplements  
(Greenbook)

State Standard Specifications

State Standard Plans

California Building, Mechanical, Plumbing and Electrical Codes

Permits issued by jurisdictional regulatory agencies

Electric, gas, and communications companies specifications and standards

Sweetwater Authority specifications and standards

Specifications, standards and requirements of MTS, BNSF, SANDAG, Port of San Diego  
and all other agencies that may be adjacent and/or affected by the project.

# EXHIBIT B

## CONTRACT PRICE

### Bid for Police Pistol Range HVAC and Safety Improvements - SWCS Inc.

Item	Section	Description	Unit	Quantity	Unit Price	Line Total
1	Base Bid	Provide Lump Sum cost for the required items as described in the design package. Cost includes but not limited to demolition of existing features, purchase and installation of all specified materials, general trade items, electrical trade items, and final system commissioning.	LS	1	\$619,311.00	\$619,311.00
					Subtotal	\$619,311.00
2	Additive Bid	Provide daily rate for as-needed 24-hour fire watch if dampers connected to alarm system or sprinklers need to be removed, replaced or adjusted. See additional description of fire watch requirements in the specifications. Note, this item will be used under a change notice if services are required and the duration will be determined in coordination with the contractor, the construction manager and the city.	LS	1	\$4,800.00	\$4,800.00
					Subtotal	\$4,800.00
					<b>Total</b>	<b>\$624,111.00</b>

**CORPORATE CERTIFICATE**

I, Gerald Smith certify that I am the Secretary of the Corporation named as Contractor in the foregoing Contract; that Stephanne Smith, who signed said contract on behalf of the Contractor, was then Vice president of said Corporation; that said contract was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

I, \_\_\_\_\_ certify that I am the Secretary of the Corporation named as Contractor in the foregoing Contract; that \_\_\_\_\_, who signed said contract on behalf of the Contractor, was then \_\_\_\_\_ of said Corporation; that said contract was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Corporate Seal: \_\_\_\_\_