

ATTACHMENT A

IRRIGATION CONTROLLER REPLACEMENT PHASE 2 CONTRACT NO. 9735-1

THIS CONTRACT FOR PUBLIC WORKS ("Contract") is entered into this 25th day of March, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and EMTS, Inc., a California corporation ("Contractor"), whose address is 2972 Larkin Ave, Clovis, CA 93612, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City has advertised for bids for the following described public work: The work necessary for the completion of this contract consists of the contractor to purchase and install Toro DXi Central Irrigation Controllers with Laguna software in various locations throughout the City of Newport Beach (the "Project" or "Work").
- C. Contractor has been determined by City to be the lowest responsible bidder and Contractor's bid, and the compensation set forth in this Contract, is based upon Contractor's careful examination of all Contract documents, plans and specifications.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. CONTRACT DOCUMENTS

The complete Contract for the Project includes all of the following documents: Notice Inviting Bids, Instructions to Bidders, Proposal, Bidder's Bond, Non-Collusion Affidavit, Notice to Successful Bidder, Labor and Materials Payment Bond (Exhibit A), Faithful Performance Bond (Exhibit B), Permits, Standard Special Provisions and Standard Drawings, Plans and Special Provisions for Contract No. **9735-1**, Standard Specifications for Public Works Construction (current adopted edition and all supplements), and this Contract, and all modifications and amendments thereto (collectively the "Contract Documents"), all of which are incorporated herein by reference. The Contract Documents comprise the sole agreement between the parties as to the subject matter therein. Any representations or agreements not specifically contained in the Contract Documents are null and void. Any amendments must be made in writing, and signed by both parties in the manner specified in the Contract Documents.

2. SCOPE OF WORK

Contractor shall perform everything required to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment and all utility and transportation services required for the Project. All of the Work to be performed and

materials to be furnished shall be in strict accordance with the provisions of the Contract Documents. Contractor is required to perform all activities, at no extra cost to City, which are reasonably inferable from the Contract Documents as being necessary to produce the intended results.

3. COMPENSATION

3.1 As full compensation for the performance and completion of the Project as required by the Contract Documents, City shall pay to Contractor and Contractor accepts as full payment the sum of **Four Hundred Eighty Thousand Two Hundred Two Dollars and 74/100 (\$480,202.74)**.

3.2 This compensation includes:

3.2.1 Any loss or damage arising from the nature of the Work;

3.2.2 Any loss or damage arising from any unforeseen difficulties or obstructions in the performance of the Work; and

3.2.3 Any expense incurred as a result of any suspension or discontinuance of the Work, but excludes any loss resulting from earthquakes of a magnitude in excess of 3.5 on the Richter Scale and tidal waves, including tsunamis, and which loss or expense occurs prior to acceptance of the Work by City.

4. PROJECT MANAGER

Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the term of the Contract. Contractor has designated Jose Arce to be its Project Manager. Contractor shall not remove or reassign the Project Manager without the prior written consent of City. City's approval shall not be unreasonably withheld.

5. ADMINISTRATION

This Contract shall be administered by the Public Works Department. City's Public Works Director, or designee, shall be the Project Administrator and shall have the authority to act for City under this Contract. The Project Administrator or designee shall represent City in all matters pertaining to the Work to be rendered pursuant to this Contract.

6. NOTICE OF CLAIMS

6.1 Unless a shorter time is specified elsewhere in this Contract, before making its final request for payment under the Contract Documents, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Contract. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Contract except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. The Contractor and City expressly agree that in addition to all claims filing

requirements set forth in the Contract and Contract Documents, Contractor shall be required to file any claim Contractor may have against City in strict conformance with the Government Claims Act (Government Code 900 *et seq.*).

6.2 To the extent that Contractor's claim is a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, the Parties agree to follow the dispute resolution process set forth therein. Any part of such "Claim" remaining in dispute after completion of the dispute resolution process provided for in Public Contract Code section 9204 or any successor statute thereto shall be subject to the Government Claims Act requirements requiring Contractor to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, Contractor shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*).

7. WRITTEN NOTICE

7.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Contract shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

7.2 All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attention: Director of Public Works
City of Newport Beach
Public Works Department
100 Civic Center Drive
Newport Beach, CA 92660

7.3 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attention: Ranisa Wells
EMTS, Inc.
2972 Larkin Ave
Clovis, CA 93612

8. INDEPENDENT CONTRACTOR

City has retained Contractor as an independent contractor and neither Contractor nor its employees are to be considered employees of City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Contract. No civil service status or other right of employment shall accrue to Contractor or its employees.

Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Contract. Anything in this Contract that may appear to give City the right to direct Contractor as to the details of the performance or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Work.

9. BONDING

9.1 Contractor shall obtain, provide and maintain at its own expense during the term of this Contract both of the following: (1) a Faithful Performance Bond in the amount of one hundred percent (100%) of the total amount to be paid Contractor as set forth in this Contract in the form attached as Exhibit B and incorporated herein by reference; and (2) a Labor and Materials Payment Bond in the amount of one hundred percent (100%) of the total amount to be paid Contractor as set forth in this Contract and in the form attached as Exhibit A and incorporated herein by reference.

9.2 The Faithful Performance Bond and Labor and Materials Payment Bond shall be issued by an insurance organization or surety (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570, and (3) assigned a Policyholders' Rating A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of *Best's Key Rating Guide: Property-Casualty*.

9.3 Contractor shall deliver, concurrently with execution of this Contract, the Faithful Performance Bond and Labor and Materials Payment Bond, and a certified copy of the "Certificate of Authority" of the Insurer or Surety issued by the Insurance Commissioner, which authorizes the Insurer or Surety to transact surety insurance in the State of California.

10. COOPERATION

Contractor agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Contractor on the Project.

11. PROGRESS

Contractor is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

12. INSURANCE

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Contract or for other periods as specified in the Contract Documents, policies of

insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

13. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Contract, the services to be provided under this Contract shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Contractor. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

14. PREVAILING WAGES

14.1 Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman needed to execute the Work contemplated under the Contract shall be paid to all workmen employed on the Work to be done according to the Contract by the Contractor and any subcontractor. In accordance with the California Labor Code (Sections 1770 et seq.), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Contract. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774 and requesting one from the Department of Industrial Relations. The Contractor is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Contractor or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations, and the parties agree that the City shall not be liable for any violation thereof.

14.2 If both the Davis-Bacon Act and State of California prevailing wage laws apply and the federal and state prevailing rate of per diem wages differ, Contractor and subcontractor, if any, shall pay the higher of the two rates. Said prevailing rate of per diem wages are on file at the City, Office of the City Clerk, 100 Civic Center Drive, Newport Beach, California 92660, and are available to any interested party on request.

15. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform the Work on this Project are identified in the Contractor's Proposal and are attached as part of the Contract Documents. Contractor shall be fully responsible to City for all acts and omissions of any subcontractors. Nothing in this Contract shall create any contractual relationship between City and subcontractor, nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise

required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Work to be performed under this Contract shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

16. RESPONSIBILITY FOR DAMAGES OR INJURY

16.1 City and its elected or appointed officers, agents, officials, employees and volunteers shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Work required hereunder, or for damage to property from any cause arising from the performance of the Project by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

16.2 Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects, obstructions or from any cause arising from Contractor's Work on the Project, or the Work of any subcontractor or supplier selected by Contractor.

16.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its elected or appointed officers, agents, officials, employees and volunteers (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Contract, any Work performed or Services provided under this Contract including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable for any or all of them).

16.4 Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Contract. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

16.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition

and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Project Work.

16.6 To the extent authorized by law, as much of the money due Contractor under and by virtue of the Contract as shall be considered necessary by City may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

16.7 Nothing in this Section or any other portion of the Contract Documents shall be construed as authorizing any award of attorneys' fees in any action to enforce the terms of this Contract, except to the extent provided for above.

16.8 The rights and obligations set forth in this Section shall survive the termination of this Contract.

17. CHANGE ORDERS

17.1 This Contract may be amended or modified only by mutual written agreement of the parties.

17.2 The Contractor shall only commence work covered by a change order after the change order is executed and notification to proceed has been provided by the City.

17.3 There shall be no change in the Contractor's members of the project team, as listed in the approved proposal, which is a part of this contract without prior written approval by the City.

18. CONFLICTS OF INTEREST

18.1 Contractor or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Contract, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

18.2 If subject to the Act and/or Government Code §§ 1090 et seq., Contractor shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Contract by City. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor's violation of this Section.

19. TERMINATION

19.1 In the event that either party fails or refuses to perform any of the provisions of this Contract at the time and in the manner required, that party shall be deemed in default in the performance of this Contract. If such default is not cured within a period of

two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the Contract forthwith by giving to the defaulting party written notice thereof.

19.2 Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Contract at any time by giving seven (7) calendar days' prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all materials purchased in performance of this Contract.

20. STANDARD PROVISIONS

20.1 Recitals. City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Contract.

20.2 Compliance with all Laws. Contractor shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Contractor shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator.

20.3 Integrated Contract. This Contract represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

20.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Contract and any other attachments attached hereto, the terms of this Contract shall govern.

20.5 Interpretation. The terms of this Contract shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Contract or any other rule of construction which might otherwise apply.

20.6 Amendments. This Contract may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

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

20.8 Controlling Law and Venue. The laws of the State of California shall govern this Contract and all matters relating to it and any action brought relating to this Contract shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

20.9 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

20.10 No Attorney's Fees. In the event of any dispute or legal action arising under this contract, the prevailing party shall not be entitled to attorneys' fees.

20.11 Counterparts. This Contract may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

21. EFFECT OF CONTRACTOR'S EXECUTION

Execution of this Contract and all other Contract Documents by Contractor is a representation that Contractor has visited the Project site, has become familiar with the local conditions under which the Work is to be performed, and has correlated all relevant observations with the requirements of the Contract Documents.

22. WAIVER

A waiver by City or any term, covenant, or condition in the Contract Documents shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition.

23. RECITALS

City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Contract.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the day and year first written above.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 3/5/25

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: Jose Montoya for
Aaron C. Harp
City Attorney
*3.5.25
AC*

By: _____
Joe Stapleton
Mayor

ATTEST:

Date: _____

CONTRACTOR: EMTS, INC., a California corporation

Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____
Guy Stockbridge
Chief Executive Officer, Chief Financial Officer

Date: _____

By: _____
Darin Sherlock
Secretary

[END OF SIGNATURES]

Attachments: Exhibit A -- Labor and Materials Payment Bond
Exhibit B -- Faithful Performance Bond
Exhibit C -- Insurance Requirements

EXHIBIT A

**CITY OF NEWPORT BEACH
BOND NO. _____**

LABOR AND MATERIALS PAYMENT BOND

WHEREAS, the City of Newport Beach, State of California, has awarded to EMTS, Inc. hereinafter designated as the "Principal," a contract for The work necessary for the completion of this contract consists of the contractor to purchase and install Toro DXi Central Irrigation Controllers with Laguna software in various locations throughout the City of Newport Beach. in the City of Newport Beach, in strict conformity with the Contract on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute the Contract and the terms thereof require the furnishing of a bond, providing that if Principal or any of Principal's subcontractors, shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the Work agreed to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same to the extent hereinafter set forth.

NOW, THEREFORE, We the undersigned Principal, and, _____
_____ duly authorized to transact business under the laws of the State of California, as Surety, (referred to herein as "Surety") are held and firmly bound unto the City of Newport Beach, in the sum of Four Hundred Eighty Thousand Two Hundred Two Dollars and 74/100 (\$480,202.74) lawful money of the United States of America, said sum being equal to 100% of the estimated amount payable by the City of Newport Beach under the terms of the Contract; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal or the Principal's subcontractors, fail to pay for any materials, provisions, or other supplies, implements or machinery used in, upon, for, or about the performance of the Work contracted to be done, or for any other work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, then the Surety will pay for the same, in an amount not exceeding the sum specified in this Bond, and also, in case suit is brought to enforce the obligations of this Bond, a reasonable attorneys' fee, to be fixed by the Court as required by the provisions of Section 9554 of the Civil Code of the State of California.

The Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Section 9100 of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this Bond, as

required by and in accordance with the provisions of Sections 9500 *et seq.* of the Civil Code of the State of California.

And Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Contract or to the Work to be performed thereunder shall in any wise affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alterations or additions to the terms of the Contract or to the Work or to the specifications.

In the event that any principal above named executed this Bond as an individual, it is agreed that the death of any such principal shall not exonerate the Surety from its obligations under this Bond.

IN WITNESS WHEREOF, this instrument has been duly executed by the above named Principal and Surety, on the _____ day of _____, 20__.

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

(Corporate Seal)

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: _____

By: _____

Aaron C. Harp
City Attorney

**NOTARY ACKNOWLEDGMENTS OF CONTRACTOR
AND SURETY MUST BE ATTACHED**

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____ } ss.
On _____, 20____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____ } ss.
On _____, 20____ before me, _____,
Notary Public, personally appeared _____,
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT B

**CITY OF NEWPORT BEACH
BOND NO. _____**

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Newport Beach, (hereinafter referred to as "City") has awarded to EMTS, Inc., (hereinafter referred to as the "Contractor") an agreement for the The work necessary for the completion of this contract consists of the contractor to purchase and install Toro DXi Central Irrigation Controllers with Laguna software in various locations throughout the City of Newport Beach. (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated March 25, 2025, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of Four Hundred Eighty Thousand Two Hundred Two Dollars and 74/100 (\$480,202.74), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, their or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, their respective officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- iii. Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20____.

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Attorney-in-Fact

Address of Surety

Print Name and Title

Telephone

(Corporate Seal)

(Attach Attorney-in-Fact Certificate)

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is \$_____.
(The above must be filled in by corporate attorney.)

Any claims under this bond may be addressed to:

(Name and Address of Surety or _____
Agent for Service in California) _____

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**
Date: _____

By: _____
Aaron C. Harp
City Attorney

**NOTARY ACKNOWLEDGMENTS OF
CONTRACTOR AND SURETY MUST BE ATTACHED**

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

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On _____, 20____ before me, _____,

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WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT C

INSURANCE REQUIREMENTS

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Contract, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.

2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each employee for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with California law for all of the subcontractor's employees.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement.

- B. General Liability Insurance. Contractor shall maintain commercial general liability insurance, and if necessary excess/umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million

dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate and four million dollars (\$4,000,000) completed operations aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

- C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Contract, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

 - D. Excess/Umbrella Liability Insurance. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this contract, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this contract, including, but not limited to, the additional insured and primary & non-contributory insurance requirements stated herein. No insurance policies maintained by the City, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess/umbrella liability policies are exhausted.
4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

 - B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess/umbrella liability, pollution

liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement shall be included as additional insureds under such policies.

- C. Primary and Non-Contributory. Contractor's insurance coverage shall be primary insurance and/or the primary source of recovery with respect to City, its City Council, boards and commissions, officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City shall be excess of Contractor's insurance and shall not contribute with it.
 - D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation or nonrenewal of coverage (except for nonpayment for which ten (10) calendar days' notice is required) for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. All of the executed documents referenced in this Contract must be returned to City within ten (10) regular City business days after the date on the "Notification of Award". Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Contract. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. The City reserves the right at any time during the term of the Contract to change the amounts and types of insurance required by giving Contractor sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.
- C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Contract Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Exhibit A are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any available proceeds in excess of specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-Insured Retentions. Contractor agrees not to self-insure or to use any self-insured retentions on any portion of the insurance required herein and further agrees that it will not allow any indemnifying party to self-insure its obligations to City. If Contractor's existing coverage includes a self-insured retention, the self-insured retention must be declared to City. City may review options with Contractor, which may include reduction or elimination of the self-insured retention, substitution of other coverage, or other solutions. Contractor agrees to be responsible for payment of any deductibles on their policies.

- G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Contract, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.
- H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Contract, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgement may be necessary for its proper protection and prosecution of the Work.
- J. Coverage Renewal. Contractor will renew the coverage required here annually as long as Contractor continues to provide any Work under this or any other Contract or agreement with City. Contractor shall provide proof that policies of insurance required herein expiring during the term of this Contract have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City with five (5) calendar days of the expiration of the coverages.
- K. Maintenance of General Liability Coverage. Contractor agrees to maintain commercial general liability coverage for a period of ten (10) years after completion of the Project or to obtain coverage for completed operations liability for an equivalent period.