

ATTACHMENT A

PURCHASE AND INSTALLATION AGREEMENT WITH MALLORY SAFETY AND SUPPLY LLC FOR PURCHASE AND INSTALLATION OF TSUNAMI SIREN SYSTEM EQUIPMENT

THIS PURCHASE AND INSTALLATION AGREEMENT ("Agreement") is made and entered into as of this 13th day of August, 2019 ("Effective Date") by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and MALLORY SAFETY AND SUPPLY LLC, a Washington limited liability company ("Contractor"), whose principal place of business is 1040 Industrial Way, Longview, Washington 98632, 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 desires to engage Contractor to provide and install public safety and emergency preparedness equipment, generally described as a tsunami siren system, including the provision of designated warranty services, as detailed in the Scope of Work attached hereto as Exhibit "A" ("Project").
- C. With the assistance of the U.S. Communities Government Purchasing Alliance ("U.S. Communities"), the County of Fairfax, Virginia ("Lead Public Agency"), on behalf of itself and all local government agencies ("Participating Public Agencies"), solicited proposals from qualified providers for the provision and installation of public safety and emergency preparedness equipment and related services ("Fairfax County RFP"). Contractor responded to the Fairfax County RFP and executed that certain Lead Public Agency Master Agreement, attached hereto and incorporated herein by this reference as Exhibit "B" ("Lead Public Agency Master Agreement").
- D. Pursuant to the Lead Public Agency Master Agreement, Contractor agreed that Participating Public Agencies may procure from Contractor equipment and services at the discounted prices therein, provided that each such Participating Public Agency first registers with U.S. Communities and executes a Master Intergovernmental Cooperative Purchasing Agreement ("MICPA"). City is registered with U.S. Communities and is a Participating Public Agency. A copy of the City's executed MICPA is attached hereto as Exhibit "C" and incorporated herein by this reference.
- E. U.S. Communities is now part of OMNIA Partners, Public Sector, a purchasing organization for public sector procurement, comprised of the nation's two leading cooperative purchasing organizations, National IPA and U.S. Communities, delivering value and savings for public agencies nationwide.

- F. Consistent with the City's registration and MICPA, and the City's procurement practices, City solicited and received a proposal from Contractor to provide equipment and services akin to those in the Lead Public Agency Master Agreement, and City desires to retain Contractor to render such equipment and services pursuant to the terms and conditions set forth in this Agreement.
- G. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by the City for the Project, is familiar with all conditions relevant to the performance of services and has committed to perform all work required for the price specified in this Agreement.

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

1. SCOPE OF WORK

1.1 Contractor shall provide all tangible items and perform all the services described in the Scope of Work attached hereto as Exhibit "A" and incorporated herein by reference. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used under reasonably competent practitioners of the same discipline under similar circumstances and that all materials will be of good quality.

1.2 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 necessary for the Project.

1.3 In consideration of the payment of the purchase price and subject to all the terms and conditions hereof, Contractor shall install tsunami siren system equipment (hereinafter referred to as "Products"), and provide warranty services, as listed and set forth in Exhibit "A".

2. TIME OF PERFORMANCE

2.1 Time is of the essence in the performance of services under this Agreement and Contractor shall complete the Project installation, implementation and acceptance testing within the time set forth in Exhibit "A". The failure by Contractor to meet this schedule may result in termination of this Agreement by City as outlined in Section 18 below.

2.2 Force Majeure. The time period(s) specified in Exhibit "A" for performance of services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if

Contractor shall within ten (10) days of the commencement of such delay notify City in writing of the cause of the delay. City shall ascertain the facts and extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the City such delay is justified. City's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3. TERM

Unless earlier terminated in accordance with Section 18 of this Agreement, this Agreement shall continue in full force and effect until two years after completion of the services agreed to herein or until August 13, 2024, whichever occurs first.

4. COMPENSATION

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and Exhibit "D" and incorporated herein by reference. As full compensation for the performance and completion of the Project, City shall pay to Contractor and Contractor accepts as full payment the sum of **Two Hundred Thousand Five Hundred Thirty Four Dollars and 71/100 (\$200,534.71)**. Additionally, the City has allocated a contingency amount of **Twenty Thousand Dollars and 00/100 (\$20,000.00)** for unexpected costs, for a total not to exceed amount of **Two Hundred Twenty Thousand Five Hundred Thirty Four Dollars and 71/100 (\$220,534.71)**. No portion of the contingency shall be expended without prior written approval of City's Project Administrator. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Contractor only for those costs or expenses specifically identified in Exhibit "A" to this Agreement or specifically approved in writing in advance by City.

4.4 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit "D".

4.5 Contractor shall provide City with a minimum fourteen (14) days' notice of its dates of installation to enable the City to prepare the installation sites for the Products in accordance with the instructions of Contractor. The City shall complete site preparation prior to the date of installation of the Products, and the site shall thereafter be available for inspection and approval. All costs and expenses related to the site preparation shall be at the sole expense of City.

4.6 Extra Work. Contractor shall not receive any compensation for Extra Work without the prior written authorization of the City. As used herein, "Extra Work" means any work that is determined by the City to be necessary for the proper completion of the Project, but which is not included in the Purchase Price as specified in Exhibit "D", and which parties did not reasonably anticipate would be necessary. Compensation for any authorized Extra Work shall be paid in accordance with the rates set forth in Exhibit "D".

5. 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 Agreement. Contractor has designated Allison Windsor 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.

6. ADMINISTRATION

This Agreement will be administered by the Police Department. City's Police Department Deputy Director or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement.

7. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

7.1 Contractor shall use only the standard materials described in Exhibit "A" in performing services under this Agreement. Any deviation from the materials described in Exhibit "A" shall not be installed unless approved in advance by the City Project Administrator.

7.2 All of the services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the services required by this Agreement, and that it will perform all services in a manner commensurate with community professional standards. All services shall be performed by qualified and experienced personnel who are not employed by City, nor have any contractual relationship with City.

8. RESPONSIBILITY FOR DAMAGES OR INJURY

8.1 City and all officers, employees and representatives thereof and all persons and entities owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services 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 services

required hereunder; or for damage to property from any cause arising from the performance of the Project and/or Services by Contractor, or its subcontractors, or its workers, or anyone employed by either of them, unless caused by the City's negligent acts, omissions, or willful misconduct.

8.2 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 to the extent arising from the negligent acts, omissions, or willful misconduct of the Contractor' or any subcontractor or supplier selected by the Contractor.

8.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless 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 (collectively, the "Indemnified Parties") from and against: (1) 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, liability, 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 Agreement, and Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them); (2) use of improper materials in performing this Project including, without limitation, defects in workmanship or materials and/or design defects; and/or (3) any and all claims asserted by Contractor's subcontractors or suppliers on the Project, and shall include reasonable attorneys' fees and all other costs incurred in defending any such claim. Contractor's liability in this Subsection shall be limited to the maximum amount of its insurance coverage for claims arising out non-negligent and non-intentional acts performed under this Agreement. Contractor shall not be held responsible for consequential or special damages, or claims made to City for such consequential or special damages. Nothing herein shall require Contractor to indemnify City from the negligence or willful misconduct of City, its officers or employees.

8.4 Intellectual Property Indemnity - Contractor shall defend, indemnify and hold City, its agents, officers, representatives, employees and City Council, boards and commissions harmless from any proceeding brought against City for any intentional or unintentional violation of the intellectual property rights of any third party with respect to Products deliverables purchased in this Agreement. This indemnification shall include, but is not limited to, infringement of any United States' letters patent, trademark, or copyright

infringement, including costs, contained in Contractor's deliverables provided under this Agreement.

8.5 Contractor shall perform all Project 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 perform work as specified in Exhibit "A" to limit impacts to traffic during the system installation period. Contractor shall be liable for any private or public property damaged during the performance of the Project work.

8.6 Contractor shall provide traffic control and access in accordance with Section 7-10 of the State Standard Specifications and the latest edition of the Work Area Traffic Control Handbook (WATCH), as published by Building News, Inc.

8.7 Traffic control and detours shall at a minimum meet the following requirements:

8.7.1 Emergency vehicle access shall be maintained at all times.

8.7.2 The locations and wordings of all barricades, signs, delineators, lights, warning devices, parking restrictions, and any other required details shall ensure that all pedestrian and vehicular traffic will be handled in a safe manner with a minimum of inconvenience to the public.

8.7.3 All advanced warning sign installations shall be reflectorized and/or lighted.

8.7.4 Traffic signal system shutdown or planned "red flash" shall be limited to 4-hour periods between the hours of 9:00 a.m. and 3:00 p.m. on weekdays (Monday through Thursday), except as authorized by the Project Administrator.

8.7.5 "STOP AHEAD" and "STOP" signs shall be furnished by the Contractor and shall conform to the provisions in Section 12-3.06, "Construction Area Signs," of the State Standard Specifications except that the base material for the signs shall not be plywood. Two "STOP AHEAD" signs and two "STOP" signs shall be placed for each direction of traffic. Locations of the signs shall be per the WATCH manual.

8.8 Nothing in this Section shall be construed as authorizing any award of attorney's fees in any action to enforce the terms of this Agreement, except to the extent provided in Section 8.3 above.

8.9 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

9. INDEPENDENT CONTRACTOR

City has retained Contractor as an independent contractor and neither Contractor nor its employees, nor any of its subcontractors, are to be considered employees of the 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 Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees.

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. 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 Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit "E", and incorporated herein by reference.

12. BONDING

12.1 Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement: 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 Agreement and in the form attached hereto as Exhibit "F" which is incorporated herein by this reference; and 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 Agreement in the form attached hereto as Exhibit "G" which is incorporated herein by this reference.

12.2 The Labor and Materials Payment Bond and Faithful Performance 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.

12.3 The Contractor shall deliver, concurrently with execution of this Agreement, the Labor and Materials Payment Bond and Faithful Performance Bond, 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.

13. PREVAILING WAGES

13.1 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 Agreement shall be paid to all workmen employed on the work to be done according to the Agreement 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 Agreement. 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.

13.2 Unless otherwise exempt by law, Contractor warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Contractor further warrants that it is currently registered and qualified to perform "public work" pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

14. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform work on this Project are identified in Exhibit "A". Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any 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 services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

15. WITHHOLDINGS

City may withhold payment to Contractor of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Contractor shall not discontinue work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

16. CONFLICTS OF INTEREST

16.1 The 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 Agreement, and (2) prohibit such

persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

16.2 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 Agreement by City. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor's violation of this Section.

17. NOTICES

17.1 All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, to City by Contractor 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. All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attention: Police Department, Deputy Director
City of Newport Beach
100 Civic Center Drive
P.O. Box 1768
Newport Beach, CA 92658

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

Attention: Allison Windsor
Mallory Safety and Supply LLC
1040 Industrial Way
Longview, Washington 98632

18. TERMINATION

18.1 Termination With Cause - In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of five (5) calendar days, or if more than five (5) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within five (5) 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 Agreement forthwith by giving to the defaulting party written notice thereof.

18.2 Termination Without Cause. Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Agreement 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 in the performance of such services up to the effective date of termination for which Contractor has not previously been paid. In the event of termination under this Section, City shall also pay Contractor for all Products, associated materials, and hardware delivered to City site under this Agreement that City deems usable.

19. EFFECT OF CONTRACTOR'S EXECUTION

Execution of this Agreement by Contractor is a representation that Contractor has visited the Project site(s), has become familiar with the local conditions under which the work is to be performed, and has taken into consideration these factors in submitting its Project proposal and Scope of Work.

20. WARRANTY

20.1 Contractor warrants to City that all Products to be delivered hereunder will be free from defects in material or workmanship and will be of the kind and quality designated or specified by Contractor in Exhibit "A". The warranty shall apply only to defects appearing within two years from the date of final acceptance by City for hardware products not manufactured by the Contractor, and two years from the date of final acceptance by City for hardware products manufactured by Contractor. If Contractor installs the Products and associated hardware and materials, or supplies technical directions of installation by Agreement, the warranty period shall run from the date of final acceptance of installation by City, provided same is not unreasonably delayed by City.

20.2 If Contractor-manufactured products delivered hereunder does not meet the above warranty, and if City promptly notifies Contractor in writing, Contractor shall thereupon correct any defect, including non-conformance with the specifications, either (at its option) by repairing any defective or damaged parts of the products, or by making available any necessary replacement parts, delivered and installed without additional charge to City within seven (7) working days. City will return the defective product to Contractor, at Contractor's expense. Contractor shall repair or replace the defective item and return it to City, shipping costs prepaid. Contractor shall perform any necessary testing, hardware and products removal, repair, replacement, certification, and installation at no cost to the City during the warranty period, using Contractor's products.

20.3 The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. Contractor does not warrant any equipment of other manufacture designated by City.

21. REPRESENTATIONS

21.1 Non-infringement. Contractor represents that to the best of its knowledge the technology embodied in the Products sold herein does not infringe upon a United States patent or United States copyright in effect as of the Effective Date.

21.2 Authority. Each party represents as follows: (a) that it has full power and authority to execute, deliver and perform its obligations under this Agreement; (b) that there are no actions, proceedings or investigations, pending or, to the best of each party's knowledge, threatened against such party which may in any manner whatsoever materially

affect the enforceability of this Agreement or the rights, duties and obligations of the parties hereunder; and (c) that the execution, delivery and performance of this Agreement will not constitute a breach or default under any agreement, law or court order under which such party is a party or may be bound or affected by or which may affect the rights, duties and obligations hereunder.

21.3 No Other Representations. Each party acknowledges and agrees that it is relying on no representation of the other party except as expressly set forth herein.

22. CONFIDENTIAL INFORMATION.

22.1 Confidential Information. In the performance of this Agreement or in contemplation thereof, the parties and their respective employees and agents may have access to private or confidential information owned or controlled by the other party and such information may contain proprietary details and disclosures. All information and data identified in writing as proprietary or confidential by either party ("Confidential Information") and so acquired by the other party or its employees or agents under this Agreement or in contemplation thereof shall be and shall remain the disclosing party's exclusive property. The recipient of Confidential Information shall use all reasonable efforts (which in any event shall not be less than the efforts the recipient takes to ensure the confidentiality of its own proprietary and other confidential information) to keep, and have its employees and agents keep, any and all Confidential Information confidential, and shall not copy, or publish or disclose it to others, nor authorize its employees, agents or anyone else to copy or disclose it to others, without the disclosing party's written approval; nor shall the recipient make use of the Confidential Information except for the purposes of executing its obligations hereunder, and (except as provided for herein) shall return the Confidential Information and data to the first party at its request. The City's duty to maintain confidentiality as described hereunder shall be subject to the laws of the State of California.

22.2 Excluded Information. The foregoing conditions will not apply to information or data which is, or which becomes generally known to the public by publication or by any means other than a breach of duty on the part of the recipient hereunder, is information previously known to the recipient, is information independently developed by or for the recipient or is information generally released by the owning party without restriction.

22.3 Right to Injunctive Relief. Because of the unique nature of the Confidential Information, the parties agree that each party may suffer irreparable harm in the event that the other party fails to comply with any of its obligations under this Section, and that monetary damages may be inadequate to compensate either party for such breach. Accordingly, the parties agree that either party will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief to enforce the terms of this Section.

23. ASSIGNMENT

This Agreement shall not be assigned by any party, or any party substituted, without prior written consent of the City and the Contractor.

24. STANDARD PROVISIONS

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

24.2 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 and City.

24.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

24.4 Integrated Contract. This Agreement 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.

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

24.6 Interpretation. The terms of this Agreement 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 Agreement or any other rule of construction which might otherwise apply.

24.7 Amendments. This Agreement 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.

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

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

24.10 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, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

24.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.


24.12 Counterparts. This Agreement 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.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

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

Date: 8.6.19

By:  (for)
Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Diane B. Dixon
Mayor

**CONTRACTOR: Mallory Safety and
Supply LLC**, a Washington limited liability
company

Date: _____

By: _____
Tim Loy
Chief Executive Officer

Date: _____

By: _____
Brian Loy
Chief Financial Officer

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services

Exhibit B – Lead Public Agency Master Agreement

Exhibit C – Master Intergovernmental Cooperative Purchasing Agreement

Exhibit D – Schedule of Billing Rates

Exhibit E - Insurance Requirements

Exhibit F – Labor and Materials Payment Bond

Exhibit G – Faithful Performance Bond

EXHIBIT A SCOPE OF SERVICES

PURCHASE and INSTALLATION OF LRAD Corporation manufactured Early Warning Mass Notification System

LRAD Corporation Equipment to be provided by Contractor shall consist of the components specified in Exhibit D of this agreement.

Work is to commence upon issuance of a notice to proceed by the City and shall be completed promptly and without unreasonable delay.

SITE LOCATIONS:

1. West Newport Park – 5700 Seashore Dr. Newport Beach, CA 92663
Existing siren located at 33°37'30.2"N, 117°56'48.9"W
2. Marina Park Lighthouse Tower – 1600 W Balboa Blvd, Newport Beach, CA 92663
Existing siren located at 33°36'29.5"N, 117°55'21.5"W
3. West Jetty View Park – 2300 Channel Rd, Newport Beach, CA 92661
Existing siren located at 33°35'44.1"N, 117°52'55.2"W

1. INSTALLATION SERVICES

Installation at each site consists of:

- Disconnect 110VAC power from existing system.
- Remove and dispose of existing siren equipment.
- Mount and orient loudspeaker arrays at top of pole.
- Mount and align satellite receiver.
- Mount and align solar panel if applicable.
- Mount and connect amplifier cabinet.
- Connect 110VAC, 20A power to cabinet.
- Connect all signal and communications lines.

2. UNFORESEEN INSTALLATION CHARGES

Unforeseen installation costs shall be quoted and approved via Change Order, including, but not limited to:

- Encountering impenetrable rock or other substrate while digging if applicable.
- Encountering water saturation requiring additional supporting sleeve for pole installation.
- Traffic control if required.
- Tree trimming or removal for unobstructed solar incidence on solar panel or signal path to satellite.

- Special construction permits as required by local laws and regulations.
- Encounter any defect with the existing infrastructure that may require replacement, modification or repair.

3. TESTING, COMMISSIONING AND TRAINING

On-site testing, commissioning and training will be performed by a qualified LRAD technician. The technician will be on site for these activities which will be performed as follows:

- Test and record satellite signal strength and network connectivity.
- Test and record solar (if present) and AC battery charging system performance.
- Test activation of loudspeaker at each site and use the local activation controls with approval from local authorities.
- Setup and test of the PC system used for command and control. Record system status for all systems.
- System deployment and operation training.
- System operation training for fixed systems with manual controls.
- Troubleshooting and maintenance training.

4. WARRANTY

A 1- year manufacturer warranty is included as standard. A manufacturer inspection agreement is included. Warranty covers manufacturing or installation defects for one year after the system commissioning is completed.

Anything outside of the standard warranty and agreement shall coordinated between the manufacturer and the City along with any prices/quotes and charges and necessary agreements or purchase orders.

Attachments:

LRAD Warranty

LRAD Annual Inspection Agreement



Warranty

Seller warrants that on the date of shipment of the Products and for a period of one (1) year from the date of shipment of the Products that the Products shall be free from defects in materials and workmanship. Seller will repair or replace without charge F.O.B. Seller's factory, any Product or product part which fails to comply with the foregoing warranty and is returned to Seller's factory within the warranty period.

THE FOREGOING WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF SUITABILITY FOR A PARTICULAR PURPOSE. IT IS EXPRESSLY STATED THAT SELLER ASSUMES NO LIABILITY FOR CONSEQUENTIAL OR LIQUIDATED DAMAGES ARISING OUT OF THE SALE OF THE PRODUCTS OR A BREACH OF THE WARRANTY CONTAINED HEREIN, AND BUYER'S REMEDY SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS OR PRODUCT PARTS AS DESCRIBED ABOVE. FURTHER, SELLER DOES NOT WARRANT AND BUYER IS RESPONSIBLE TO ENSURE THAT THE PRODUCT PURCHASED COMPLIES WITH APPLICABLE LOCAL, MUNICIPAL, STATE AND FEDERAL LAWS, ORDINANCES, REGULATIONS AND CODES, IF ANY.

The foregoing warranty shall not apply to any Products or product parts which have been (a) repaired or altered by any party other than Seller unless such repair or alteration has been specifically approved in writing by Seller, (b) subjected to misuse, negligence or accident, or (c) used in a manner or in an application other than that recommended by Seller. Seller will not be responsible for any damage to any Product or product part that occurs during or after shipment or during or after installation.

Limitation of Liability; Commencement of Actions

In no event shall Seller or its subcontractors be liable for any loss, damage, cost of repairs, incidental, indirect, punitive or consequential damages of any kind, including, but not limited to loss of use of facilities and equipment or loss of profit, for any reason, whether based upon any warranty, or arising in contract, tort, negligence or strict liability or otherwise arising in connection with the design, manufacture, sale, use or repair of the Products sold hereunder. Nor shall Seller or its subcontractors be liable to Indemnify owner and/or contractor for claims for such consequential, incidental, indirect, or punitive damages. Further, in no event will Seller be liable to Buyer for more than the purchase price of the Products sold hereunder. Any action, regardless of form, arising out of this contract must be commenced by Buyer within one (1) year after the cause of action has accrued, or two (2) years from the date of shipment, whichever first expires.



Annual Inspection Agreement

1 Definitions

This chapter defines the meanings of a set of terms used along the document. Apart from these definitions, the terms defined in the Master License and Services Agreement (the “Agreement”) shall govern.

Speaker Array – means the cluster of the speakers that houses drivers

Cabinet Control – means the enclosure that houses the amplifier, batteries, chargers, MP3 Player and other circuitry

Connectivity – The connection between the cabinet control and the software activation

Software – means the software to activate the system

Solar Panels – Panels that are connected to the cabinet control

Trouble Report – or TR

Acknowledgement means LRAD’s acknowledgement of a Trouble Report;

Category 1 Fault means a Fault that causes a “loss of service” provided by the Solution, where “loss of service” means:

- (a) the Solution is unable to activate the speaker arrays;
- (b) the Solution is unable to send SMS messages to the SMS provider (in the case the SMS is part of the scope of the contract);
- (c) the Solution is unable to connect to the speaker arrays;

Important note: the connectivity from the speaker arrays to the software of the Solution is supported by third parties (service providers), as well as the SMS sending (SMS providers and mobile network carriers). Therefore, they will not be in the scope of the support services and the service level agreement of LRAD.

Emergency is defined in Table 1 (Severity Levels and Definitions) in Paragraph **Error! Reference source not found.**;

Final Correction has the meaning given to it in the Support Services Policy, attached as Appendix 1 to the Agreement;

Help Desk has the meaning given to it in the Support Services Policy;

Response has the meaning given to it in the Support Services Policy;

Restoration has the meaning given to it in the Support Services Policy;

Trouble Report or TR has the meaning given to it in the Support Services Policy;

Trouble Report Response or TR Response has the meaning given to it in the Support Services Policy;



2. Scope of Work

- (a) The Annual Inspection must be provided within one year of installation at an agreed upon time with the client. This inspection will be provided on site. The client shall assist in access to the sites.
- (b) During testing, the client will assist remotely to perform tests from the remote system.
- (c) LRAD will inspect each site which includes inspections of the required connections, contactors, log information. The log information will determine the health status of the chargers, amplifiers and drivers.
- (d) LRAD will perform a visual inspection on the speaker arrays and if it is determined that a lift is needed to replace or modify the speaker arrays, this will be considered an optional service at an agreed upon price.
- (e) LRAD will check the connectivity of the system and may require to make noise out of the speakers at a low volume.
- (f) The Client may determine to provide an annual test at full volume. If requested by the Client, LRAD will support this test.
- (g) LRAD will test the batteries (load) if applicable and the power charging mechanism.
- (h) If solar panels are installed, LRAD will observe and inspect the panels. LRAD will provide any recommendations and clean if necessary.
- (i) LRAD will review the software and assist in uploading any updates and review the log file with the Client.
- (j) LRAD will respond with 8 hours or earlier if the system requires any issues. Issues may include but not limited to software that can be fixed remotely, simple trouble shooting over the phone and/or if required a person to be on site.
- (k) Acts of God, human interference such as vandalism, accident to the pole or structure etc... will require additional charges that are not included in this agreement.

EXHIBIT B
LEAD PUBLIC AGENCY MASTER AGREEMENT

(see attached)



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Date of Award: **JUN - 7, 2018**

Safeware, Inc.
4403 Forbes Blvd
Lanham, MD 20706

Attention: Rick Bond, Vice President of Sales

Reference: RFP2000002547; Public Safety and Emergency Preparedness Equipment and Related Services

Dear Mr. Bond:

Acceptance Agreement

Contract Number: 4400008468

This acceptance agreement signifies a contract award for Public Safety and Emergency Preparedness Equipment and Related Services. The period of the contract shall be from October 1, 2018 through September 30, 2023 with renewals of five (5) additional years, one (1) year at a time or a combination of the years, by mutual agreement of both parties.

The contract award shall be in accordance with:

- 1) This Acceptance Agreement; and
- 2) The Attached Memorandum of Negotiations.

Please note that this is not an order to proceed. A Purchase Order, which constitutes your notice to proceed, will be issued to your firm. Please provide your Insurance Certificate according to Fairfax County Special Provisions, Section 1 (Insurance) within ten (10) days after receipt of this letter.

Sincerely,

Cathy A. Muse, CPPO
Director/County Purchasing Agent

abj

Department of Procurement & Material Management
12000 Government Center Parkway, Suite 427
Fairfax, VA 22035-0013

Website: www.fairfaxcounty.gov/dpmm

Phone 703-324-3201, TTY: 1-800-828-1140, Fax: 703-324-3228



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

MEMORANDUM OF NEGOTIATIONS

RFP 2000002547

Public Safety and Emergency Preparedness Equipment and Related Services

The County of Fairfax (hereinafter called the County) and Safeware, Inc. and Mallory Safety and Supply, LLC. (hereinafter called the Contractor) hereby agree to the following in the execution of Contract 4400008468 with Safeware, Inc. and Contract 4400008495 with Mallory Safety and Supply, LLC. (hereinafter called the Contract) for the provision of public safety and emergency preparedness equipment and related services. The final Contract contains the following documents:

- a. The County's Request for Proposal RFP 2000002547 and all Addenda;
- b. The Contractor's Technical Proposal and Cost Proposal dated March 8, 2018;
- c. The Contractor's response to clarification questions dated March 28, 2018.
- d. The Contractor's response to items for negotiation dated April 12, 2018.
- e. This Memorandum of Negotiations;
- f. County's purchase order;
- g. Any subsequent amendments to the Contract.

In addition, the County and the Contractor agree to the following:

1. The parties to this Contract acknowledge that Safeware, Inc. submitted a proposal, on behalf of Safeware, Inc. and Mallory Safety and Supply, LLC., in response to RFP2000002547. Mallory Safety and Supply, LLC. acknowledges and agrees to provide public safety and emergency preparedness equipment and related services to Participating Public Agencies of the states of Alaska, Hawaii, Washington, Oregon, California, Arizona, Nevada, New Mexico, Wyoming, Idaho, Montana, and Utah and to assume all responsibilities and obligations under this Contract for its designated territory. Safeware, Inc. acknowledges and agrees to provide public safety and emergency preparedness equipment and related services to Participating Public Agencies located in all other states of the United States, not identified above and to assume all responsibilities and obligations under this Contract for its designated territory. Contract number 4400008468 has been assigned to Safeware, Inc. and Contract number 4400008495 has been assigned to Mallory Safety and Supply LLC. to facilitate ordering.
2. The Contractor shall provide eCommerce rebates as outlined below:
 - If 30%-69.99% of total invoiced sales are received by website orders at the conclusion of each contract year, a 0.5% rebate will be provided on purchases made through eCommerce.
 - If 70% or greater of total invoiced sales are received by website orders at the conclusion of each contract year, a 1% rebate will be provided on purchases made through eCommerce.
 - o Conditions: The agency total purchases for the annual contract period must be greater than \$20,000. Ecommerce is defined as any order placed through Safeware or Mallory's website or fully integrated third party marketplace where the Participating Public Agency's orders and Safeware-Mallory's invoices are transacted via EDI, XML or cXML. Ecommerce rebates cannot be combined with other rebates, early payment discounts, or where the buying agency or procurement platform charges an administrative or transaction fee.

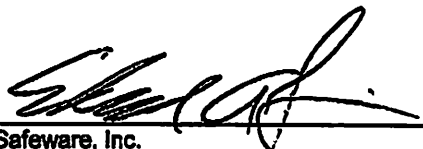
Department of Procurement & Material Management
12000 Government Center Parkway, Suite 427
Fairfax, VA 22035-0013
Website: www.fairfaxcounty.gov/dpm
Phone 703-324-3201, TTY: 1-800-828-1140, Fax: 703-324-3228

3. Large sales greater than \$20,000 may be eligible for additional price discounts from manufacturers and will be automatically flagged in the Contractor's system to seek additional price concessions from manufacturers.
4. For purchase of services under this Contract, the Contractor shall provide a minimum of 10% discount from Safeware and Mallory's list price. The pricing for services may be negotiated to a lower price.
5. The Contractor acknowledges and agrees that the County and the Participating Public Agencies reserve the right to review and negotiate the license and maintenance terms and conditions prior to any purchase of software under this Contract and that the Contractor will provide full support for executing the negotiated license/maintenance agreement(s) by the County/Participating Public Agencies and the software publisher. The Contractor also agrees to obtain agreement from its software publishers that their shrink wrap, browse wrap, click through, or similar processes are for access purposes only, and any terms and conditions offered in or referenced by those procedures will have no force or effect.
6. The Contractor shall hold the discount rate of 41% for equipment and 10% for services firm for the entire contract term including renewal periods.
7. The parties mutually agree that the first sentence of Paragraph 1.3 of Section 1 titled Insurance (Fairfax County Special Provisions) is deleted and is replaced with the following language:

No change, cancellation, or non-renewal shall be made in any insurance coverage without a thirty-day written notice to the County Purchasing Agent and/or Risk Manager.
8. The parties mutually agree that the Paragraph 1.2 b. of Section 1 titled Insurance (Fairfax County Special Provisions) is deleted and is replaced with the following language:

The contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the contractor, its subcontractors, and the interest of the County, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the contract or in connection with contracted work.

ACCEPTED BY:


Safeware, Inc.

6/6/18
Date

Shawn Murray
Mallory Safety and Supply, LLC.

6/6/18
Date


Cathy A. Muse, CPPO
Director/County Purchasing Agent

6/7/18
Date

EXHIBIT C
MASTER INTERGOVERNMENTAL COOPERATIVE
PURCHASING AGREEMENT

(see attached)



U.S. COMMUNITIES[™] GOVERNMENT PURCHASING ALLIANCE



MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT

This Master Intergovernmental Cooperative Purchasing Agreement ("Agreement") is made between certain government agencies that execute a Lead Public Agency Certificate (collectively, "Lead Public Agencies") to be appended and made a part hereof and other government agencies ("Participating Public Agencies") that agree to the terms and conditions hereof through the U.S. Communities registration process and made a part hereof.

RECITALS

WHEREAS, after a competitive solicitation and selection process by Lead Public Agencies, in compliance with their own policies, procedures, rules and regulations, a number of suppliers (each, a "Contract Supplier") have entered into Master Agreements with Lead Public Agencies to provide a variety of goods, products and services based on national and international volumes (herein "Products and Services");

WHEREAS, Master Agreements are made available by Lead Public Agencies through U.S. Communities and provide that Participating Public Agencies may purchase Products and Services on the same terms, conditions and pricing as the Lead Public Agency, subject to any applicable local purchasing ordinances and the laws of the State of purchase;

WHEREAS, the parties desire to comply with the requirements and formalities of any intergovernmental cooperative act, if applicable, to the laws of the State of purchase;

WHEREAS, the parties hereto desire to conserve resources and reduce procurement cost;

WHEREAS, the parties hereto desire to improve the efficiency, effectiveness and economy of the procurement of necessary Products and Services;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and of the mutual benefits to result, the parties agree as follows:

1. That each party will facilitate the cooperative procurement of Products and Services.
2. That the procurement of Products and Services subject to this Agreement shall be conducted in accordance with and subject to the relevant statutes, ordinances, rules and regulations that govern each party's procurement practices.
3. That the cooperative use of solicitations obtained by a party to this Agreement shall be in accordance with the terms and conditions of the solicitation, except as modification of those terms and conditions is otherwise allowed or required by applicable law.
4. That the Lead Public Agencies will make available, upon reasonable request and subject to convenience, information which may assist in improving the effectiveness, efficiency and economy of Participating Public Agencies' procurement of Products and Services
5. That the Participating Public Agency will make timely payments to the Contract Supplier for Products and Services received in accordance with the terms and conditions of the procurement. Payment, inspections and acceptance of Products and Services ordered by the Participating Public Agency shall be the exclusive obligation of such Participating Public Agency. Disputes between the Participating Public Agency and Contract Supplier are to be resolved in accord with the law and venue rules of the State of purchase.
6. The Participating Public Agency shall not use this Agreement as a method for obtaining additional concessions or reduced prices for similar products or services.
7. The Participating Public Agency shall be responsible for the ordering of Products and Services under this Agreement. A Lead Public Agency shall not be liable in any fashion for any violation by a Participating Public Agency, and the Participating Public Agency shall hold the Lead Public Agency harmless from any liability that may arise from action or inaction of the Participating Public Agency.
8. The exercise of any rights or remedies by the Participating Public Agency shall be the exclusive obligation of such Participating Public Agency.
9. This Agreement shall remain in effect until termination by a party giving thirty (30) days prior written notice to U.S. Communities at 2999 Oak Road, Suite 710, Walnut Creek, CA 94597.
10. This Agreement shall become effective after execution of the Lead Public Agency Certificate or Participating Public Agency registration, as applicable.

Lead Public Agency Certificate

LEAD PUBLIC AGENCY CERTIFICATE

I hereby acknowledge, on behalf of City of Newport Beach (the "Lead Public Agency") that I have read and agree to the general terms and conditions set forth in the enclosed Master Intergovernmental Cooperative Purchasing Agreement (MICPA) regulating the use of the Master Agreements and purchase of Products and Services that from time to time are made available by Lead Public Agency to Participating Public Agencies nationwide through U.S. Communities. Copies of Master Agreements and any amendments thereto made available by Lead Public Agency will be provided to Suppliers and U.S. Communities to facilitate use by Participating Public Agencies.

I understand that the purchase of one or more Products or Services under the provisions of the MICPA is at the sole and complete discretion of the Participating Public Agency.



City of Newport Beach

Authorized Signature, Lead Government Agency

6-11-14

Date

EXHIBIT D
SCHEDULE OF BILLING RATES

(see attached)

Mallory Safety & Supply LLC

740 Freeport Blvd #108 • Sparks, NV 89431 • (775) 355-2000

QUOTATIONPurchase Order Address:
PO Box 2068
Longview, WA 98632

Order Number	
2440217	
Order Date	Page
5/1/2019 13:19:57	1 of 2
Estimated Date:	
5/1/2019 00:00:00	

Bill To:CITY OF NEWPORT BEACH POLICE DEPT
870 SANTA BARBARA BLVD
NEWPORT BEACH, CA 92660**Ship To:**CITY OF NEWPORT BEACH POLICE DEPT
870 SANTA BARBARA BLVD
NEWPORT BEACH, CA 92660

Quote Expires On 8/29/2019

Requested By: Mr. JONATHAN STAFFORD

Customer ID: 89239

Carrier:

Freight: CUSTOMER DOES NOT PAY FREIGHT

PO Number					Ship Route		Taker			
LRAD QTE							CARAGON			
Order Line	Quantities					Item ID Item Description	Pricing UOM	Unit Price	Extended Price	
	Ordered	Shipped	Remaining	UOM Unit Size	Disp.		Unit Size			

Delivery Instructions: US COMMUNITIES #4400008495 THIS PRICING IS FOR THE CITY OF NEWPORT BEACH POLICE DEPT AND IS NOT ELIGIBLE FOR OTHER PUBLIC OR NON PROFIT AGENCIES

1	3.0000		EA	1.0		LRACO-11761401 8 x 170W Amplifier Cabinet for Eight Cross Configuration Omni/Directional High Powered Speaker Array, NEMA 4X Cabinets 12 VDC System Charged by Line Voltage MP3 Player/Controller with Record on the Fly PTT Microphone Class D Amplifiers Batteries (2) 12 VDC	EA 1.0	27,777.78	83,333.34
2	12.0000		EA	1.0		LRACO-11737700 Assembly, dual 60XL degree horns with pole mounting brackets	EA 1.0	3,611.11	43,333.32
3	3.0000		EA	1.0		LRACO-11648300 Satellite Activation: ViaSat FT2225 Unit with Pole Mount	EA 1.0	3,333.33	9,999.99
4	3.0000		EA	1.0		LRACO-11648200 Satellite Activation: 30m Ethernet Cable	EA 1.0	0.00	0.00
5	6.0000		EA	1.0		LRACO-11752900 Speaker Cable, 2 Conductor, 70FT Ferrule to Ferrule	EA 1.0	0.00	0.00
6	1.0000		EA	1.0		LRACO-GENASYSMASTERSW Genasys Cloud based Command and Control Interface GENASYS SOFTWARE One Time setup fee (Cloud based) IPAWS Compaitable Additional Seat License for Life Guard Activation	EA 1.0	7,222.22	7,222.22

Mallory Safety & Supply LLC

740 Freeport Blvd #108 • Sparks, NV 89431 • (775) 355-2000

QUOTATION

Order Number	
2440217	
Order Date	Page
5/1/2019 13:19:57	2 of 2

Divisions of Mallory include
California Safety and
Brenton Safety Solutions

Quote Expires On 8/29/2019

Order Line	Quantities					Item ID Item Description	Pricing UOM	Unit Price	Extended Price
	Ordered	Shipped	Remaining	UOM Unit Size	Disp.		Unit Size		
7	1.0000			LO	1.0	LRACO-LRADMNSINSTALL Installation - Labor, Material and Equipment to Provide The Following: Decommissioning and removal of existing siren systems in (3) existing locations, Install, Complete All Electrical Connections	LO	33,333.33	33,333.33
8	1.0000			LO	1.0	LRACO-LRADMNSCOM Start Up and Commissioning	LO	0.00	0.00
9	1.0000			EA	1.0	LRACO-LRADMNSSV Annual maintenance and service contract (LRAD to monitor and service the system) includes Annual sat fee	EA	8,888.89	8,888.89

Total Lines: 9

SUB-TOTAL: 186,111.09**TAX:** 14,423.62**AMOUNT DUE:** 200,534.71

Dispositions: C = Cancelled B = Backordered P = Production Item

U.S. Dollars

EXHIBIT E 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 Agreement, 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, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
 - B. General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, 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 one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general 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) with no endorsement or modification limiting the scope of coverage for liability assumed under a 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 Agreement, 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 each accident.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.
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 Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers 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 from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage 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. Insurance certificates and endorsement 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 Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement 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.
- D. Enforcement of Agreement 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 Section 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.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- 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 Agreement, 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 Agreement, 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 judgment may be necessary for its proper protection and prosecution of the Work.

EXHIBIT F
CITY OF NEWPORT BEACH
BOND NO. _____
LABOR AND MATERIALS PAYMENT BOND

WHEREAS, the City of Newport Beach, State of California, has awarded to United Storm Water, Inc., hereinafter designated as the "Principal," an Agreement for the purchase and installation of Catch Basin Connector Pipe Screens, in the City of Newport Beach, in strict conformity with the Agreement 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 Agreement 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 **Two Hundred Twenty Thousand Five Hundred Thirty Four Dollars and 71/100 (\$220,534.71)**, 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 Agreement; 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 Agreement 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 Agreement 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

**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 _____, 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)

EXHIBIT G
CITY OF NEWPORT BEACH
BOND NO. _____
FAITHFUL PERFORMANCE BOND

The premium charges on this Bond is \$ _____, being at the rate of \$ _____ thousand of the Agreement price.

WHEREAS, the City of Newport Beach, State of California, has awarded to United Storm Water, Inc., hereinafter designated as the "Principal," an Agreement for the purchase and installation of Catch Basin Connector Pipe Screens, in the City of Newport Beach, in strict conformity with the Agreement 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 Agreement and the terms thereof require the furnishing of a Bond for the faithful performance of the Agreement.

NOW, THEREFORE, we, the Principal, and _____, duly authorized to transact business under the laws of the State of California as Surety (hereinafter "Surety"), are held and firmly bound unto the City of Newport Beach, in the sum of **Two Hundred Twenty Thousand Five Hundred Thirty Four Dollars and 71/100 (\$220,534.71)**, lawful money of the United States of America, said sum being equal to 100% of the estimated amount of the Agreement, to be paid to the City of Newport Beach, its successors, and assigns; 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 heirs, executors, administrators, successors, or assigns, fail to abide by, and well and truly keep and perform any or all the Work, covenants, conditions, and agreements in the Agreement 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 its true intent and meaning, or fails to indemnify, defend, and save harmless the City of Newport Beach, its officers, employees and agents, as therein stipulated, then, Surety will faithfully perform the same, in an amount not exceeding the sum specified in this Bond; otherwise this obligation shall become null and void.

As a part of the obligation secured hereby, and in addition to the face amount specified in this Performance Bond, there shall be included costs and reasonable expenses and fees, including reasonable attorneys fees, incurred by City, only in the event City is required to bring an action in law or equity against Surety to enforce the obligations of this Bond.

Surety, for value received, stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Agreement or to the Work 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, alterations or additions of the Agreement or to the Work or to the specifications.

This Faithful Performance Bond shall be extended and maintained by the Principal in full force and effect for one (1) year following the date of formal acceptance of the Project by City.

In the event that the Principal 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 Principal and Surety above named, 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

*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 _____, 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)