RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH ADS ENVIRONMENTAL SERVICES, A DIVISION OF ADS, LLC, FOR PROVISION OF FLOW AND RAIN GAUGE MONITORING SERVICES FOR A TERM OF TWO (2) YEARS WITH THE OPTION TO EXTEND THE AGREEMENT FOR AN ADDITIONAL ONE (1) YEAR PERIOD, FOR AN AMOUNT NOT TO EXCEED SEVEN HUNDRED FIFTY THOUSAND DOLLARS ($750,000.00) ANNUALLY FOR A TWO (2) YEAR TOTAL OF ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000.00) ANNUALLY.

_____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator for the Department of Public Works to enter into an agreement with ADS Environmental Services, a division of ADS, LLC, for provision of flow and rain gauge monitoring services for a term of two (2) years with the option to extend the agreement for an additional one (1) year period, for an amount not to exceed $750,000.00 annually for a two (2) year total of $1.5 million.

ADOPTED: _____, 2014

/mem

City of Chattanooga

Resolution/Ordinance Request Form

Date Prepared: 4/9/14

Preparer: Alice L. Cannella, Director Alice Cannella 4-9-14 Department: Waste Resources Division

Brief Description of Purpose for Resolution/Ordinance: Res./Ord. # _____ Council District # ALL

Resolution authorizing the Administrator of Public Works to enter into an agreement with ADS Environmental Services, a division of ADS, LLC, for provision of flow and rain gauge monitoring services for a term of two (2) years with the option to extend the agreement for an additional one (1) year period in an amount not to exceed $750,000 annually.

Name of Vendor/Contractor/Grant, etc.	ADS LLC	New Contract/Project? (Yes or No)	Yes
Total project cost	$ 750,000	Funds Budgeted? (Yes or No)	Yes
Total City of Chattanooga Portion	$ 750,000	Provide Fund	6010
City Amount Funded	$	Provide Cost Center	K30107
New City Funding Required	$	Proposed Funding Source if not budgeted	
City's Match Percentage	%	Grant Period (if applicable)	

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
$	
$	
$	

Agency Grant Number

CFDA Number if known

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Approved by: _____

Reviewed by FINANCE OFFICE DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

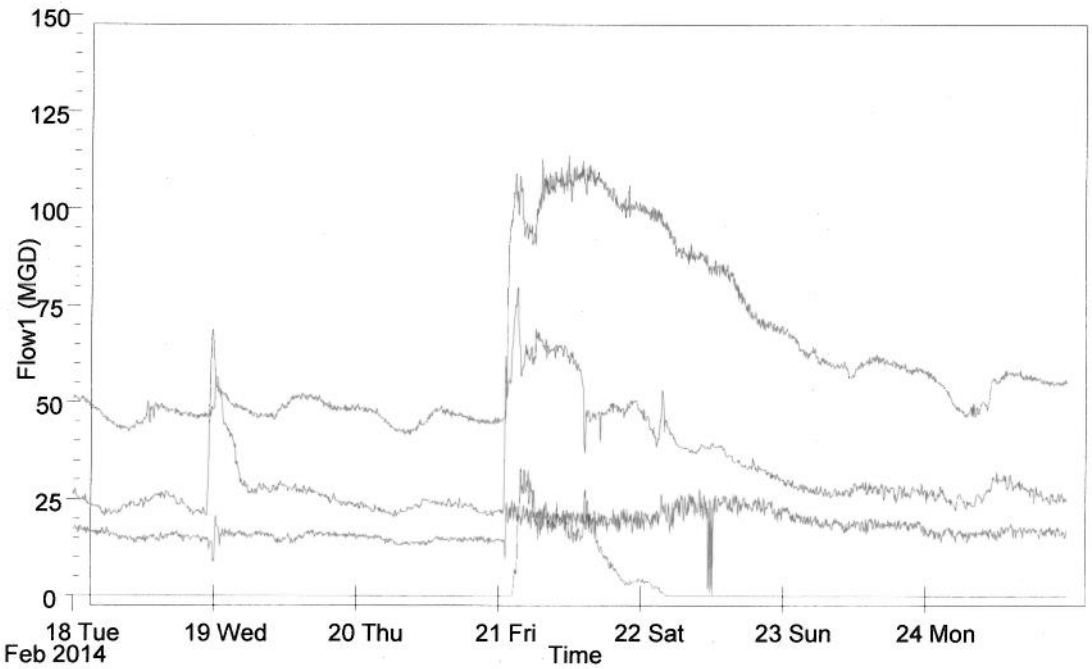
Revised: October, 2011

Questions? Contact Finance Department . 423.757.5232

Annual Flow and Rain Gauge Monitoring Services

Agreement with ADS Environmental Services

- Continued flow monitoring for the Interceptor Sewer System
- Used for measuring effectiveness of Consent Decree projects
- Used to develop hydraulic model, required by Consent Decree
- Used to analyze extraneous water entering the sewer system
- Used to review flow & velocity to identify structural or maintenance problems



AGREEMENT
For
Flow Monitoring and Rain Gauge Services
(3/14)

This Agreement (hereinafter referred to as "Agreement"), entered into by and between the City of Chattanooga, acting by and through its Department of Public Works (hereinafter referred to as "City"), and ADS, LLC (hereinafter referred to as "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION 1. INTERPRETATION AND INTENT

1.01 The "Agreement", as referred to herein, shall mean this Agreement executed by City and Contractor, and shall included these Terms and Conditions, the work and services described in Appendices and attached hereto, and any written supplemental agreement or modification entered into between City and contractor, in writing, after the date of this Agreement.

1.02 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Contractor.

1.03 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of City or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right to remedy to City, shall govern.

1.04 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City's representatives having drafted all or any portion of this Agreement.

1.05 This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

1.06 This Agreement shall be construed under and governed by the laws of the State of Tennessee.

1.07 Applicable taxes are not included in any number or pricing of this project, taxes will be applicable as per state and Federal guidelines.

SECTION 2. DUTIES OF CONTRACTOR

2.01 The Contractor shall provide the services as set forth in Appendix A – Scope of Services, attached hereto and made a part thereof.

AGREEMENT
For
Flow Monitoring and Rain Gauge Services
(3/14)

SECTION 3. TERM

3.01 This Agreement shall commence on the date both the City and the Contractor execute the documents and will terminate after two (2) years that date unless terminated earlier in accordance with this Agreement.

3.02 This Agreement shall also have the option at the discretion of the City to extend the Agreement for one (1) additional one-year periods.

SECTION 4. COMPENSATION AND PAYMENT

4.01 The Contractor proposes to furnish all labor, benefits, overhead, profit, equipment, materials, supplies, vehicle charges, employee protective equipment, maintenance expense, mobilization charges, and any other charges associated with the performance of the services in accordance with the conditions of this Agreement necessary to provide the equipment and services as defined in Appendix A to this Agreement.

4.02 Payment shall be in conformance with the pricing outlined in Appendix B to the Agreement.

4.03 The Contractor shall submit a properly itemized invoice for services performed and expenses incurred under this Agreement and shall cooperated with and provide any other necessary information to the City.

4.04 The City shall have the option of adding additional flow monitoring or rain gauge sites at the pricing as outlined in Appendix B to this Agreement.

4.05 The City will pay Contractor monthly, or more frequently if mutually agreeable to the City, in an amount equal to the approved services performed.

4.06 The quantity of services and work performed will be determined from the equipment in service, listed in monthly reports prepared by the Contractor for the City's review, submitted with each invoice. Only services and work provided on project shall be applicable.

4.07 Downtime for equipment, personnel, or other problems shall not be charged against the project. Representatives of the Contractor and the City will review the time sheets at the end of each work period to determine the services and work performed during that period.

4.08 Payment shall be in accordance with the City's normal policies and procedures.

4.09 Actual amount of services and work performed will fluctuate depending on the City's requirements at any given time. Rain gauges and flow monitors, either purchased or rented, shall be in service for time periods determined by the City's needs as communicated and agreed to by Contractor in writing.

SECTION 5. GENERAL PROVISIONS

5.01 Independent Contractor. The parties agree that the Contractor is an independent contractor as the term is commonly used and is not an employee of the City. As such, the Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to the Contractor. The Contractor acknowledges that it is not insured in any manner by the City for any loss of any kind whatsoever. The Contractor has no authority, express or implied, to bind or obligate the City in any way.

5.02 Subcontracting. The parties agree that the Contractor shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of the City. In the event that the City approves of any such subcontracting, assignment or delegation, the Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. The City shall have no obligation whatsoever toward such person. The Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve the Contractor of any responsibility for performing under this Agreement.

5.03 Necessary Documentation. The Contractor certifies that it shall furnish the City, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of the City or other units of local government, the State of Tennessee, and the United States. The Contractor further certifies that it is now in and shall maintain its good standing with such governmental agencies and that it is now and shall maintain its license, permit, registration, authorization, or certification, as applicable, in force during the term of this Agreement. Failure of the Contractor to comply with this paragraph shall constitute a material breach of this Agreement.

5.04 Confidentiality of City Information.

5.04.1 The Contractor understands that the information provided to it or obtained from City during the performance of its services is confidential and may not, without prior written consent of the City, be disclosed to a person not in the City's employ except to employees or agents of the Contractor who have a need to know in order to provided the services. Further, the Contractor's Work Product generated during the performance of this Agreement is confidential to the City. The failure to comply in all material respects with this section shall be considered a material breach of this Agreement. The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Confidential information shall not include information, that: (a) was known by the Contractor at the time it was received; (b) is, as of the time of its disclosure or thereafter, becomes part of the public domain through a source other than the Contractor; (c) is made known to the Contractor by a third person who does not impose any obligation of confidence on Contractor with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena or court order

whereupon the Contractor shall provide notice to the City prior to such disclosure; or (e) information that independently developed by the Contractor without references to the confidential information.

5.04.2 The Contractor shall not, under any circumstances, release information provided to it by, or on behalf of , the City that is required to be kept confidential by City pursuant to Tennessee law except as contemplated by this section, clause (d).

5.05 Ownership of Documents and Materials.

5.05.1 All documents, including records, programs, data, film, tape, articles, memos, and other materials, created or developed under this Agreement, shall be considered "work for hire" and the Contractor transfers any ownership claim to the City and all such matters will be the property of the City. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the City, is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss or damage to these materials developed for or supplied by the City and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Agreement shall be available to the City. Notwithstanding the foregoing, the Contractor shall be entitled to retain a set of its work papers in accordance with professional standards.

5.05.2 Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that the Contractor shall retain all of its rights in its proprietary information including, without limitation, its methodologies and methods of analysis, , ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by the Contractor prior to, or acquired by the Contractor during, the performance of this Agreement and the same shall not be deemed to be Work Product or Work For Hire and the Contractor shall not be restricted in anyway with respect thereto.

5.06 Insurance.

5.06.1 The Contractor shall, as a condition precedent to this Agreement, purchase and thereafter maintain such insurance as will protect it and the City from the claims set forth below which may arise out of or result from the Contractor's operation under this Agreement, whether such operations be by the Contractor or by its subcontractors or by anyone directly or indirectly employed by any of them, or by anyone directly for whose acts any of them may be liable:

1) Claims under Worker's Compensation and Occupational Disease Acts, and any other employee benefits acts applicable to the performance of the work.

2) Claims for damages because of bodily injury and personal injury, including death, and;

3) Claims for damages to property.

The Contractor's insurance shall be not less than the amounts shown below:

COVERAGES	LIMITS OF LIABILITY
Worker's Compensation Employer's Liability	Statutory $750,00
Bodily Injury Liability Except Automobile	$750,000 each occurrence $1,500,000 aggregate
Property Damage Liability Except Automobile	$750,000 each occurrence $750,000 aggregate
Automobile Bodily Injury Liability	$750,000 each person $1,500,000 each occurrence
Automobile Property Damage	$750,000 each occurrence
Excess Umbrella Liability	$3,000,000 each occurrence

5.06.2 With the prior approval of City, the Contractor may substitute different types of coverage for those specified as long as the total amount of required protection is not reduced. The Contractor shall be responsible for all deductibles.

5.06.3 Nothing in the above provisions shall operate as or be construed as limiting the amount of liability of the Contractor to the above enumerated amounts. Notwithstanding any other provision of this Agreement, the Contractor shall provide all documents of insurance coverage required by the City prior to work being performed. The City shall be named as additional insured on the above policies.

5.07 Performance Bond. The City requires that the Contractor secure the performance of its obligations under this Agreement through a Performance Bond from a financial institution (issuer) acceptable to the City. The Contractor shall provide a Performance Bond for the amount of $500,000 for the first year to the two year term to be renewed annually and with each subsequent contract renewal.

The Performance Bond will secure the performance of the Contractor's obligations through start up and during on-going operations. The Performance Bond shall be in place for the duration of the Contract.

The Contractor shall propose an Issuer to the City for its approval and shall provide the City with appropriate documentation concerning the Issuer to enable the City to evaluate the financial resources of the Issuer. The City will perform an independent evaluation to determine the acceptability of Contractor's Issuer. At a minimum, both Moody's and Standard and Poor's as either AA for foreign banks or AA-minus for domestic banks

must rate the long-term debt of the Issuer proposed by the Contractor. In the event the Contractor elects a foreign bank, the bank shall have offices located in the U.S.A to conduct the Contractor's business pertaining to this transaction.

5.08 Termination for Cause or Convenience.

5.08.1 If Contractor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors or consultants employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, the City may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that Contractor shall be given (1) not less than sixty (60) calendar days written notice (delivered by certified mail, return receipt requested) of City's intent to terminate, and (2) an opportunity for consultation with City prior to termination. In determining the amount of final payment to be made to Contractor upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of Contractor's default.

5.08.2 This Agreement may be terminated in whole or in part in writing by City or City's convenience; provided that Contractor is given (1) not less than one hundred twenty (120) calendar days written notice (delivered certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with City prior to termination.

5.08.3 Upon receipt of a termination action for default or for the City's convenience, Contractor shall (1) promptly discontinue all services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise makes available to City all data, drawings, specifications, reports, estimates, summaries, and such other information, materials or documents as may have been accumulated by Contractor in performing this Agreement, whether completed or in process.

5.09 Termination for Failure of Funding. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminated this Agreement without penalty by giving written notice documenting the lack of funding, in which instance unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. City agrees that it will make its best efforts to obtain sufficient funds, including, but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

5.10 Upon Termination for any cause. Upon termination the equipment that has not been rightfully purchased by the City shall remain the property of the Contractor, and the Contractor has the full right to remove such equipment from the installation sites and to

use such equipment as they see fit with no further consideration to the City, financial or otherwise. The City will not unreasonably withhold access to such sites for the purpose of removing the equipment in the event of termination. All funds paid to date of termination will be considered rent, and no refund will be due to the City.

5.11 Indemnification. Contractor agrees to indemnify, defend, and hold harmless the City and its officers, agents, officials and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission by Contractor. Such indemnity shall include attorney's fees and all costs and other expenses arising there from or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein. The City shall not provide such indemnification to the Contractor, provided, however, that the Contractor shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omission of the City.

5.12 Notice. Any notice, invoice, order or other correspondence required to be sent under this Agreement shall be sent to:

To Contractor:

ADS LLC
1300 Meridian St.
Suite 3000
Huntsville, AL 35801
Phone: (205) 965-8931
Fax: (256) 430-6617

Attn: Hal Kimbrough
General Manager

To City:

City of Chattanooga
Moccasin Bend WWTP
455 moccasin Bend Road
Chattanooga, TN 37405
Phone: (423) 757-5026
Fax: (423) 757-4904

Attn: Waste Resources
System Engineer

Purchasing Agent
City of Chattanooga
City Hall
101 East 11th Street
Suite G13
Chattanooga, TN 37402
Phone: (423) 634-7230
Fax: (423) 634-7244

Administrator of Public Works
City of Chattanooga
Development Resource Center
2nd Floor
1250 Market Street
Chattanooga, TN 37402
Phone: (423) 643-6000

5.13 Disputes. Contractor shall carry out all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with City. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and City may otherwise agree in writing. Should the Contractor fail to continue to perform its responsibilities as regards to all non-disputed work without delay, any additional costs incurred by the City or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the City for such cost. The City may withhold payments on disputed items pending resolution of the dispute.

5.14 Non-discrimination. Contractor and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion, color, sex, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

5.15 Conflict of Interest. Contractor certifies and warrants to City that neither it nor any of its agents, representatives or employees who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with City.

5.16 Non-contingent Fees. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty City shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

5.17 Force Majeure. In the event that either party is unable to perform any of its obligation under this Agreement – or to enjoy any of its benefits – because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to services already provided. If the period of non-performance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

5.18 Applicable Laws; Forum. The Contractor agrees to comply with all applicable federal state and local laws, rules regulation or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. This includes the Federal Civil rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations there under after execution of this Agreement shall be reviewed by the City and the Contractor to

determine whether the provisions of the Agreement require formal modification. This Agreement shall be construed in accordance with the laws of the State of Tennessee, and by all applicable Municipal Ordinances or Codes of the City. Suit, if any, shall be brought in the State of Tennessee and Hamilton County.

5.19 Waiver. The City's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of the City's rights or remedies.

5.20 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.

5.21 Successors and Assigns. City and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement, except as otherwise provided herein, Contractor shall not assign, sublet or transfer its interest in this Agreement without the written consent of City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of City.

5.22 Authority to Bind Contractor. Notwithstanding anything in this Agreement to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute agreements on behalf of the Contractor designated above, has filed proof of such authority with City and has obtained all necessary or applicable approval from the home office of the contractor to make this Agreement fully binding upon the contractor when his/her signature is affixed and accepted by the City.

5.23 Audit Provision

5.23.1 The term "Contractor" is used interchangeably to describe signatories to contracts, grants, and agreements with the City and applies to reflect the relationship with the City (Contractor, Licensee, Supplier, Vendor, Consultant, Grant Recipient, etc.)

5.23.2 The City or its assign may audit all financial and related records (including digital) associated with the terms of the contract or agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Contractor. The City may further audit any contractor records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest.

5.23.3 The contractor shall at all times during the term of the contract or agreement and for a period of five years after the end of the contract, keep and maintain record of the work performed pursuant to thei Contract or Agreement. This shall include proper records of the quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Contractor. Documents shall be maintained by the Contractor necessary to clearly reflect all

work and actions taken. All such record shall be maintained in accordance with generally accepted accounting principles. The Contractor shall at its own expense make such records available for inspection and audit (including copies and extracts of records required) by the City at all reasonable times and without prior notice.

5.23.4 The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the City.

5.23.5 Cost of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Contractor shall reimburse the City for the total cost of an audit that identifies significant findings that would benefit the City.

5.23.6 This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

ENTERED into this _____ day of _____, 2014.

ADS LLC

BY:

_____

TITLE:

_____

City of Chattanooga, Tennessee

BY:

_____

TITLE: Administrator of Public Works

AGREEMENT
For
Flow Monitoring and Rain Gauge Services
(3/14)

APPENDIX A

SCOPE OF SERVICES

A. PROJECT SUMMARY

1. The City of Chattanooga, Tennessee (City) has selected ADS LLC (Contractor) to supply flow and rain gauge monitoring services for the City's Interceptor Sewer System and Moccasin Bend WWTP.

2. The City intends to continue monitoring the current billing sites that will not be subject to relocation. The remaining flow metering sites shall be subjected to relocation to achieve monitoring objectives such as Inflow and Infiltration reduction and system modeling for the evaluation of sewer system performance. Rain gauges and flow monitors, either purchased or rented, shall be in service for time periods determined by the City's needs.

B. GENERAL SCOPE OF WORK

1. The Contractor shall provide all labor, benefits, overhead and profit, equipment, materials, insurance, transportation, mobilization charges, any extended warranties, and other related services required in connection with providing flow and rain gauge monitoring services as described herein.

2. The Contractor shall obtain all necessary requirements from all federal, state, and local regulatory agencies related to this project.

3. The Contractor shall provide reliable, complete and accurate data, and event notification to ensure project integrity in order to meet the project guarantees.

4. The Contractor's data viewing platform shall provide for incorporating on-line field work orders, data connectivity reports, real-time data processing, and real-time alarming. The Contractor shall monitor project guarantees in real-time and ensure delivery of the following:
   a. Guaranteed field response
   b. Guaranteed 98% uptime / data population
   c. Guaranteed 95% wireless data connectivity
   d. Meetings as required
   e. New technology guarantees

5. The Contractor shall supply the City with the most appropriate technology to achieve the most accurate measurements given the individual characteristics of each particular installation sit. When component or meter replacement is necessary due to equipment failure or any other circumstance, equipment shall be upgraded where appropriate. Up to date data can be collected on demand using the ADS IntelliServe program.

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6. The flow monitoring project shall start on the date of Council approval of this Agreement. For new installations, site inspections shall take place first so that monitoring locations are confirmed as suitable for accurate measurement prior to installation. The City will recommend all locations and the Contractor shall verify all site conditions and site configurations during site inspections. Each site shall be numbered using the current nomenclature. The Contractor shall present the site inspection results to the City for review.

7. Success of the project shall evolve around five key metrics:

    a. 95% Wireless Connectivity
    b. 98% Data Population
    c. 98% Data Accuracy
    d. 72 hr. Field Crew Response Time
    e. + / - 5% Error of measurement

8. Renewal of the contract will be determined on ADS LLC staying with the average operating performance outlined by the key metrics. The Contractor shall submit key metric with each monthly report.

9. Alarms for each site shall be available through the ADS IntelliServe program, and will be determined per condition assessments and site evaluations by the City.

10. The contractor shall provide a username and password protected website to allow the City to view data, generate graphs and scatter plots, etc.

11. The Contractor shall obtain all necessary flow and rainfall monitoring service data requirements from all federal, state, and local regulatory agencies related to the flow monitoring services for the City's collection system.

12. The Contractor shall format all reports and certifications as required by all applicable EPA and/or Sated regulation and guidelines regarding flow monitoring and rain gauge services.

13. All of the services prvided by the Contactor shall be completed in a good and workmanlike manner. All services provided by the Contactor shall be in compliance with all applicable statutes, rules, ordinances and regulations of, but not limited to, the USEPA, TDOT, OSHA, and any similar federal, state, and local laws or regulations applicable to the Contractor or to the services described herein.

14. The Contractor's personnel shall comply with all City, Waste Resources Division, and Moccasin Bend WWTP work rules and regulation when on site.

15. The services furnished by the Contractor shall be subject to inspection and approval by the City's designated representative, but the manner and method of providing the services shall be the responsibility of the Contractor.

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(3/14)

C. SPECIFIC SCOPE OF WORK

1. Operation and Maintenance Services

   a. The Contractor shall provide field personnel trained and certified to operate and maintain the Contractor's flow and rainfall monitoring network. The Contractor shall maintain the existing flow and rainfall monitoring network according to a documented Quality Management System of procedures and work instructions.

   b. The Contractor shall provide and maintain an inventory of new spare parts. Previously used or refurbished parts shall not be acceptable.

   c. The Contractor shall have the capability to remove, reinstall, reactivate and confirm flow monitors and rain gauges at hydraulically suitable sites to support the objectives of the City's flow monitoring goals and objectives.

   d. The Contractor shall have the capability and financial resources to acquire and place in service new flow monitors and or rain gauges as directed by the City in a timely fashion. The Contractor shall have the capability to respond within 24 hours to uninstall/reinstall flow monitors already in service due to commencement/completion of maintenance or rehabilitation services that would affect the integrity of the monitor hardware and/or the accuracy of its measurements.

   e. The Contactor shall provide comprehensive maintenance services for the flow monitors, sensors, telemetry, and software. The maintenance period shall run concurrently with the data analysis period.

   f. The Contractor shall maintain all of the current features and functions of the City's flow monitoring and rain gauge network, including the capability to vary the monitoring interval from fifteen minutes to five minutes or to whatever interval is required to provide adequate data depending on the nature of any given monitoring site.

   g. Maintenance services shall consist of scheduled preventative maintenance and repair services, including all parts and labor required to keep the hardware, software and system performance in compliance within these specifications.

   h. The Contractor shall notify the City on a daily basis of which location are scheduled to be serviced that day. The Contractor shall submit a monthly report to the City detailing all maintenance provided on the flow and rain gauge monitoring system during the previous month. This report shall include problems encountered, service required, component replacements, monitor and sensor downtime, and other related pertinent information.

i. The proposer shall conduct calibrations on the three plant effluent outfall monitors during the first month of each calendar quarter and shall deliver the certified calibration reports to the City's designated representative within three (3) business days of the onsite performance of the calibrations.

2. Data Review and Management

a. The Contractor shall be responsible for collecting data from flow monitor and rain gauges at least three (3) times per week. Where required, data will be collected more frequently.

b. The Contractor shall review the collected data using data management software within twelve (12) hours of the data collection.

c. The Contractor shall assign certified and trained data analysts to this project. An outline of the curriculum of the training program and dates of completion for each data analyst shall be submitted.

d. The Contractor shall analyze, on a monthly basis for each monitoring station, the data patterns in both the hydrograph and the scattergraph formats to determine if the patterns are consistent with functioning equipment and current hydraulics.

e. The Contractor shall describe in detail how it will ensure the flow monitors are reading accurately relative to field measurements. This description shall include the recommended frequency and procedure for site confirmations at each flow-monitoring site.

f. During the weekly data review, the Contractor shall determine whether each site if malfunctioning and proactively review each site for potential downtime (battery voltage, etc.).

g. On a weekly basis, based on the data review, the Contractor shall prepare a list of sites requiring field service.

h. The Contractor shall be responsible for the completion of the field service work indicated on the list and maintaining a Field Service Database of all field service work. All sites shall be repaired within three (3) days from the discovery of a malfunction.

i. The Contractor shall be create and maintain an archive of all data entities prior to any editing being performed.

3. Data Editing

   a. The Contractor shall describe the techniques used to identify and remedy outliers and/or missing data. Discussion of any data modifications shall be included in the monthly report.

   b. The Contractor shall describe the techniques used to confirm the depth and average velocity of each site using independent measurement technologies.

   c. The Contractor shall describe the techniques used to correlate flows of each monitor to its upstream monitoring locations and what methods, if any, the Contractor uses to analyze the net flows between monitors. This includes, but is not limited to, flow balancing during dry weather periods to ensure each sub-basin (monitoring area) has a positive flow contribution.

   d. The Contractor shall determine silt levels and enter/confirm them in the database.

4. Selection of Final Flow Equations

   a. The Contractor shall use the continuity equation to calculate flow quantities.

   b. The Manning formula may be used to estimate flow quantities only when the continuity equation cannot be applied due to faulty velocity data and when free flow conditions exist. The Manning quantity shall be reconciled to continuity quantity both before and after the period of faulty velocity data.

   c. The Contractor shall generate a monthly final report of the data. Within 30 days of the end of each monthly monitoring period, the City may request a hard copy of the following:
      1. Site commentaries
      2. Hydrograph plots of quantity versus rainfall
      3. Scatter graphs of depth verses velocity
      4. Long-tables of the final data

   d. The Contractor shall generate a separate monthly report to the City's specification that the City can use to bill other agencies contributing flow to the City's collection system. This report shall be due within ten days of the end of each monthly monitoring period. Report formats will be supplied by the City. Automation of billing reports may require programming.

5. Data Uptime

a. The Contractor shall operate and maintain the flow and rain gauge monitoring system such that the achieved uptime of the system is maintained at a minimum of 98%. Uptime shall be defined as the availability of Flow Quantity (Q) for the entire system-wide monitoring network (all flow monitoring sites).

b. The Contractor shall deliver a monthly uptime report with its monthly final report.

c. The penalty for noncompliance with the uptime requirements of the system shall be as follows:

1. The City desires to achieve a system-wide uptime of 98% or greater for the duration of service. The Contractor shall be penalized where the total system-wide uptime falls below 95%. The rate shall be calculated at 1% of the monthly bill for each percentage point of uptime below 95% for the entire network.

2. The City understands that certain events outside of the control of ADS, LLC, such as those incurred by Acts of God, may prevent the service provider from achieving the specified uptime. Penalties shall not be applied in these cases.

6. Real Time System Capabilities

a. The Contractor shall be capable of providing real time access to flow monitors and rain gauge data via their Intelliserve Program. This system can be accessed through the internet, without the use of software that must be loaded on a desktop or laptop so as to allow access from locations that may only have an internet connection.

b. The Contractor shall host the system on servers that are kept secure, have direct access to the internet backbone for best possible connectivity and speed and have power/battery back up and fire suppression systems to protect the City's data.

c. Real time access through the ADS Intelliserve Program shall give the City the ability to automatically collect the data from the network of flow monitors and rain gauges, receive alarms, escalate those alarms, plot the data, export the data and view the location and connectivity of sites on a GIS-based system map. These functionalities are further described as:

1. The system shall automatically collect data from the flow monitor and rain gauges equipped with wireless telemetry at pre-programmed times.
2. The system shall provide on demand collects of the data by clicking on a

system on-screen link or button. The system shall then collect the data, shall update the web-hosted screens and shall make the data available for use by the City.

3. The system will allow the City to receive alarms from the network for pre-programmed conditions as defined by the City on a site-by-site basis such as:

   - High Depth Alarm: When the monitor measured depth exceeds a user-defined threshold, the monitor shall call into the system and the system shall collect the most current site data for use by the City over the web-based application. High-High Depth Alarm: When the monitor measured depth exceeds a second user-defined threshold, the monitor shall call into the system and the system shall collect the most current site data for use by the City over the web-hosted application.

   - Loss of Flow Alarm: Prediction and anomaly alarms can be set to determine loss of flow in the sewer network. Meters shall have the ability to learn the site-specific hydraulic pattern. Dynamic thresholds can be set in the monitors that when exceeded shall cause the monitor to alert the system. The system shall receive this alarm and automatically collect the most current site data for use by the City over the web-hosted application.

   - Rain Alarms: The system shall accept rain total and intensity alarms that can be pre-programmed into the rain gauges. The system shall receive these alarms and automatically collect the most current site data for use by the City over the web-hosted application.

   - Escalation of Alarms: The system shall display the alarms via the web-hosted interface and allow for City definable escalation of the alarms to users via e-mail, text message or telephone call.

4. The system shall store all collected data and alarms in an SQL database that shall be automatically backed up periodically by the Contractor to prevent loss of the data.
5. The system shall make that data available over the internet to enable the City to see alarms and dynamically plot hydrographs, scattergraphs and tables for data entities using time frames selected by the City.
6. Plots, graphs and tables shall be readily exportable for use in documents or spreadhseets including e-mails and Microsoft™ Office Suite products.
7. The system shall provide an interactive GIS style interface for the City to see the location, connectivity and status of flow monitor and rain gauge sites.

d. The Contractor shall maintain and host the system for the City and make it available via the internet and kept secure by the use of a user ID and password for each user authorized by the City.
e. The user ID and password shall provide the authorized user permission to access only the functionality or parts of the system authorized by the City. These permission levels shall vary per user.
f. The Contractor shall provide any updates to the system automatically as they become available.

7. DATA ANALYSIS

a. The Contractor shall provide for identification and editing of data irregularities.
b. The Contractor shall identify data that is clearly erroneous.
c. The Contractor shall provide backup copies of raw flow monitoring data. This data shall be maintained by the Contractor for the duration of the contract.
d. The Contractor shall provide a review of the data editing that shall be performed by senior personnel with a minimum of 10 years of data analysis experience.
e. The Contractor shall perform the data review immediately after each data collection (minimum of three (3) times per week) to ensure that the equipment is operational and functioning properly.

8. FLOW INFORMATION REPORTS

a. Billing Report

1. The Contractor shall generate a separate monthly report to the City's specification that the City can use to bill regional customers contributing flow to the City's collection system.

2. The Contractor shall submit billing site reports within 10 days of the end of the monthly monitoring period.

3. Billing reports shall consist of finalized flow data and rainfall data.

b. Monthly Reports

1. The Contractor shall submit monthly reports to the City presenting the data collected during each monthly flow and rainfall monitoring period.

2. Monthly reports shall include, but not be limited to:

a. Graphical presentations of quantity data versus rainfall for each flow monitoring location including a scattergraph presentation of flow depth and velocity data.
b. Tabular summaries of flow depth, velocity, quantity and associated rainfall data for each flow monitoring location including minimum, average and maximum values for flow depth and quantity data along with flow quantity and rainfall totals for the monthly reporting period.
c. Narrative summaries of observed flow conditions at each flow monitoring location.

Monthly reports shall be provided to the City no later than 30 days following the conclusion of each month.

Monthly reports shall be provided via the internet on a secure and password protected site that shall allow the City to plot and download flow and rain data as needed.

Monthly reports shall be provided to the City detailing all maintenance provided on the flow and rain gauge monitoring system during the previous month. This report shall include problems encounterd, service required, component replacements, monitor and sensor downtime and other related pertinent information.

The Contractor shall deliver an Uptime Report with its monthly final report.

9. COMPREHENSIVE PERFORMANCE REPORTS

a. The Contractor shall generate an initial Comprehensive Performance Report within 45 days of the effective date of the contract based on existing data provided by the City and present it to the City in a meeting at the City's offices.

b. The Comprehensive Analysis Report shall include, but not be limited to, the following:

1. A detailed site flow assessment for each monitoring site consisting of a site commentary, maximum, minimum and average flow for the period.

2. An Inflow and Infiltration (I&I) analysis for each monitoring site for notable storms experienced during the data period.

3. A ranking of monitoring sites based on worst to best I&I results normalized for basin footage/pipe diameter.

4. A dry/wet weather pipe operational capacity determination with supporting graphs and charts for each monitoring site.

5. The Comprehensive Performance Report shall be performed twice each year with new data from the current monitoring period and presented to the City in a meeting at the City's offices.

10. **SOFTWARE**

a. The Contractor shall provide and maintain all software required for the scope of services related to the City's Flow Monitoring and Rain Gauge Monitoring services.

b. The Contractor shall demonstrate the software to be used and its compliance with the specifications upon request by the City. The software shall be demonstrated using historical data obtained from flow monitors installed at an existing City location designated by the City. There shall be no reimbursement for the demonstration.

c. The Contractor shall provide evidence to the City that above software is properly licensed to the Contractor and they are not in violation of any patents, trademarks or copyrights.

d. The Contractor shall provide evidence to the City that it maintains a fully staffed Support Center that is accessible to the City during normal business hours Monday through Friday via a toll-free number.

e. The Contractor personnel in the Support Center shall have access to the City's flow monitoring and rain gauge network.

f. The Contractor's staff members shall be trained to provide the City with quality support for the software applications.

g. All calls to the Contractor's Support Center shall be tracked, compiled and analyzed for trends in the City's requests. A log of all calls from the City and the identified problem and resolution shall be submitted to the City on a monthly basis.

D. **CITY-SUPPLIED SERVICES**

1. The City will provide access to its flow monitoring and rain gauge historical records.

2. The City will provide all of the on-site computer hardware and software operating systems recommended by the Contractor to access the flow and rain gauge monitoring system.

3. The City will provide space onsite for ADS, LLC to perform work, training and equipment storage.

4. The City will designate a person to coordinate the specified work with the Contractor.

5. The City will provide copies of all current and necessary permits from all federal, state and local regulatory agencies related to the flow and rain gauge monitoring programs.

6. The City will provide the plans of the City's wastewater collection and interceptor sewers as needed by the Contractor to perform the work.

E. WARRANTY

1. The Contractor guarantees all instruments and accessories manufactured by the Contractor to be free from defects in workmanship and material for a period of one (1) year from the date of shipments from the Contractor's manufacturing facility, except as noted below.

2. The Contractor shall provide extended warranty packages as requested and agreed to by the City.

3. Batteries are guaranteed to last between 6-12 months. Sites using Intelliserve may experience shorter battery life.

4. On standard projects, no warranty is provided for the following:

   a. Expendable or consumable items.

   b. The warranty is void if any part of the unit is subjected to conditions outside of those recommended by the manufacturer or subject to excessive use.

5. The warranty is offered on the original purchased equipment only; it is void if persons other than the Contractor's technicians or other authorized personnel have damaged the instrument or equipment through mishandling, alteration or repair. In the event that in the opinion of the Contractor, damage is attributed to customer actions, all costs for repair will be borne by the City.

6. This warranty is limited to the repair or replacement of parts only. In no case shall the Contractor's liability exceed the purchase price of the product. The Contractor is not responsible for consequential damages or costs incurred by others due to delay in delivery, in repair or service, or in failure of the product. The Contractor disclaims all other warranties, whether express, implied or statutory, including merchantability or fitness for use in any particular application.

7. During the warranty period, the Contractor shall at its sole discretion, replace, repair or furnish a refund for any product purchased by the buyer which has a defect in material or workmanship, provided the product is returned to the Contractor with the Contractor's prior permission and return authorization number and provided that the product has not

been misused (including electrostatic discharge), improperly installed or subject to unauthorized repairs or modifications. Normal calibration is not covered by warranty.

8. The City's returns of products under warranty that are found to be operational as designed will be charged a lab assessment fee for the Contractor's labor. The product will be returned to the City at the City's expense.

9. Procedures for handling equipment being sent to the Contractor for warranty and related shipping issues are address in the section entitled "Instructions for Returning Products".

10. This warranty is the only warranty made by the Contractor with respect to the goods delivered, and may be modified or amended only by the written instrument signed by a corporate officer or the Contractor and accepted by the City.

11. Instructions for returning products:

    a. The instructions and guidelines in this document must be strictly adhered to.

    b. Receiving and Unpacking Guidelines: Immediately upon receipt of a shipment from the Contractor, the customer should inspect the carton and product for any signs of shipping damage. If there is any observed damage or evidence that there may be damage, the City must notify the carrier immediately and file a claim. After the carrier acknowledges the damage and approves the return of the product, the customer should repackage the damaged item(s), contact the Contractor to obtain a Returned Material Authorization (RMA) number and ship the product, freight prepaid, to the Contractor.

    c. Returning Products Under Warranty: If a manufacturing or material defect is discovered during the operation of a product while it is under warranty, the City should contact the Contractor to obtain an RMA number. The defective product must be carefully packages and shipped to the Contractor, freight prepaid. The Contractor shall repair and return the product via prepaid surface freight.

    d. Returning Products Out of Warranty: The Contractor provides repair and calibration services for products and parts that are not covered under the warranty. The City must contact the Contractor to obtain an RMA number then carefully package the product and ship to the Contractor, freight prepaid.

    e. The City is responsible for all shipping and customs (if applicable) charges for any products returned that are not under warranty. Unless otherwise directed, the Contractor will return ship all repaired products not under warranty COD surface freight.

AGREEMENT
For
Flow Monitoring and Rain Gauge Services
(3/14)

APPENDIX B

COMPENSATION, PRICING AND PAYMENT

FLOW MONITORING AND RAIN GAUGE SERVICES

April, 2014

B1. COMPENSATION PRICING

The Contractor agrees to perform the services outlined in the Agreement and Appendices for the pricing based upon a service term of two (2) years with one (1) renewal for one year assuming the City uses its discretion to exercise the remaining option year. All prices are in U.S. dollars and exclude any applicable taxes.

No.	Description	Unit	Price
1	Comprehensive Monitoring Network Maintenance Services	Per unit, per month	$235.00
2	Flow Meter Installation	Each	$1,153.00
3	Flow Meter Rental	Per unit, per month	$75.00
4	Rain Gauge Purchase	Each	$2,400.00
5	Rain Gauge Installation	Each	$200.00
6	Site Relocation	Each	$933.00
7	Data Collection and Reporting	Per unit, per month	$25.00
8	Data Analysis and Monthly Report	Per unit, per month	$110.00
9	Wireless Communication Fee	Per unit, per month	$18.00
10	Periodic Comprehensive Reports	Each	$5,000.00

B2. ADDITIONAL AGREEMENT OPTIONS

The City shall have the option of adding additional flow monitoring or rain gauge sites at the Agreement pricing rate.

All additional monitors shall be subject to the same monthly services in the above pricing table: Maintenance Services, Data Collection and Reporting, Data Analysis and Monthly Report and Wireless Communications.

B3. **PAYMENT**

Payment will be in accordance with Section IV of this Agreement. Year three unit prices are subject to change according to the CPI as published by the BLS Southeast Information Office percent change rates for all customer offices in the south, if required.