

INTERGOVERNMENTAL SUPPORT AGREEMENT

BETWEEN

NAVAL BASE SAN DIEGO

AND

CITY OF SAN DIEGO

FOR

CHOLLAS CREEK TRASH CLEAN-UP

**IGSA NUMBER N00245-23-IGSA-0002**

This is an Intergovernmental Support Agreement (IGSA) between the Department of the Navy, Naval Base San Diego (NBSD), a federal agency, as represented by and through the Commanding Officer, NBSD, and the City of San Diego (City), a political subdivision of the State of California. When referred to collectively, the Department of the Navy, NBSD and the City are referred to as the “Parties”.

1. Background. The Parties have entered this IGSA so that the City may provide partial reimbursement to NBSD for the collection, removal and proper disposal of trash and debris located on NBSD property on or adjacent to Chollas Creek (“Chollas Clean Up Services”). The City agrees to contribute 75 percent of the annual costs for Chollas Clean Up Services. The 75 percent share is consistent with the City’s share of costs for annual monitoring and reporting in Chollas Creek as outlined in the Chollas Bacteria Total Maximum Daily Load (TMDL) Cost Share agreement between jurisdictions located within the Chollas Creek watershed.
2. Authorities. This IGSA is entered into by NBSD under the authority of 10 U.S.C. § 2679 and by the City of San Diego pursuant to San Diego Municipal Code sections 22.3208(g) and 22.3210.
3. Purpose. This IGSA is made by and between the Parties to provide NBSD with partial reimbursement from the City for Chollas Clean Up Services using NBSD personnel at the mutually agreed upon rates for services set forth in Attachment (1) to this IGSA. This IGSA outlines the roles and responsibilities of the Parties, identifies the services to be furnished by NBSD, the partial reimbursement costs to be paid by the City, and the appropriate reimbursement, indemnification, and liability procedures.
4. RESPONSIBILITIES OF THE PARTIES
  - 4.1. NBSD agrees to:

4.1.1. Provide supplies, personnel and equipment to perform the Chollas Clean Up Services, as required. It is anticipated that Chollas Clean Up Services will occur at least twice per calendar year, but additional clean up service may be required due to weather conditions (e.g. rain events).

4.1.2. Upon completion of each Chollas Clean Up Service, submit a work invoice to the City that identifies the work completed, to include hours worked, tonnage of trash and debris removed from Chollas Creek, and costs incurred.

4.1.3. Upon receipt of payment for each Chollas Clean Up Service rendered, submit a receipt of payment and invoice paid notice to City.

4.2. City agrees to:

4.2.1. Upon receipt of a validated work invoice, pay NBSD for services within 30 days rendered in accordance with paragraph 8.4 of this IGSA.

4.3. Both Parties agree to:

4.3.1. Cooperate to ensure mutual goals are met and issues are promptly resolved.

4.3.2. Promptly notify the other party of any concerns and communicate openly and transparently to ensure any concerns or issues are promptly dealt with in order to not impede performance under this IGSA.

4.3.3. Resolve to try to work out disputes to the extent feasible before initiating termination procedures.

5. Public Disclosure. Except as otherwise provided herein, to the extent permitted by the laws governing each Party, the Parties shall protect confidential and proprietary information and shall maintain the confidentiality of exchanged information when the information is designated as confidential in writing on the document by the providing Party. Confidential and/or proprietary documents shall not be released to any third party without the prior consent of the providing Party. This provision does not apply to information that: (1) was publicly known, or otherwise known to the receiving Party, at the time it was disclosed to the Party; (2) subsequently becomes publicly known through no act or omission of the receiving Party; or (3) otherwise becomes known to the receiving Party other than through disclosure by the providing Party.

5.1. The Parties will comply with public requests for information related to this IGSA pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the California Public Records Act, California Government Code § 7920 et seq.

5.2. If the City receives a request for information about this IGSA made under the

California Public Records Act (CPRA), the City will notify NBSD Points of Contact [POCs] in this IGSA.

5.2.1. If NBSD requests that a record be withheld as confidential or proprietary, it will be the responsibility of NBSD to provide specific legal grounds, including applicable caselaw, on which the City can rely in withholding records requested under the CPRA, should the City choose to withhold such records. If NBSD does not provide a specific legal basis for withholding the requested records within a timeframe specified by the City, the City will release the records as required by the CPRA.

5.3. If NBSD receives a request for information about this IGSA under Freedom of Information Act (FOIA), NBSD will notify the City POCs in this IGSA.

5.3.1. If the City requests that a record be withheld as confidential or proprietary, it will be the responsibility of the City to provide specific legal grounds, including applicable caselaw, on which NBSD can rely in withholding records requested under the FOIA, should NBSD choose to withhold such records. If the City does not provide a specific legal basis for withholding the requested records within a timeframe specified by NBSD, NBSD will release the information as required by FOIA.

6. Relationship of the Parties. In the exercise of their respective rights, powers, and obligations under this IGSA, each Party acts in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Each Party is responsible for all costs of its personnel and contractors, including pay and benefits, support, and travel. Neither Party shall provide, without the prior written consent of the other Party, any contractor or employee with a release that waives or purports to waive any right a Party may have to seek relief or redress against that contractor or employee.

7. GENERAL PROVISIONS

7.1. Administration. This IGSA shall be mutually administered by the Parties. The Parties will identify personnel in their organizations to coordinate and manage the provision of services and the payment for services provided by NBSD under this IGSA.

7.2. Points of Contact. The POCs will be used by the Parties to communicate in the implementation of this IGSA. Each Party may change its POC and will provide e-mail notice to all POCs when a POC is changed.

7.2.1. For NBSD:

7.2.1.1. Installation Programs and Readiness Integrator [Currently, Caroline Rodi, EMAIL TBD, (619) 556-6893, name and

contact information subject to change]

7.2.1.2. Deputy Public Works Officer [Currently, Mr. James Mugg, james.p.mugg.civ@us.navy.mil, (619) 556-1319, name and contact information subject to change]

7.2.2. For the City:

7.2.2.1. Deputy Director, Brianna Menke, BMenke@sandiego.gov, (858-541-4314) -, [name and contact information subject to change]

7.2.2.2. Stormwater Compliance Manager Jim Harry, JHarry@sandiego.gov, ( 619-247-5661) [name and contact information subject to change]

7.2.3. Correspondence. All correspondence to be sent and notices given pursuant to this IGSA will be addressed as follows:

7.2.3.1. ATTN: Commanding Officer, Naval Base San Diego  
3455 Senn Road, Bldg. 72, San Diego, CA 92071

7.2.3.2. ATTN: Jim Harry Stormwater Compliance Manager, City of San Diego Stormwater Department, 9370 Chesapeake Drive, San Diego CA, 92131

7.2.4. Records. The Parties shall follow established cost principles and procedures in determining allowable costs and payments under this IGSA and shall maintain books, records, documents, or other evidence pertaining to costs and expenses under this IGSA for a minimum of three years after the expiration of the IGSA. To the extent permitted under applicable laws and regulations, the Parties shall each allow the other to inspect such books, records, documents, or other evidence pertaining to costs and expenses under this IGSA. Each Party shall maintain records of each purchase order and all payments made in accordance with its governing record retention rules.

## 8. FINANCIAL DETAILS

8.1. Cost. City shall pay NBSD for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$130,000. The Exhibit A, Pricing Schedule provides the chargeable labor rate for services provided under the contract.

Appendix A provides the estimated service needs and totals for the first contract year. This amount is an estimate only and is subject to adjustment by mutual

agreement of the Parties for the potential option years.

8.2. Obligation of Funds. This IGSA does not document the obligation of funds between the Parties. The obligation of funds by the Parties is subject to the availability of appropriated funds pursuant to the DoD Financial Management Regulation and to the San Diego City Council appropriating funding for and authorizing work and compensation under this IGSA for the fiscal year. Either Party may terminate this IGSA if sufficient funds are not duly appropriated and authorized for any given fiscal year, or if funds appropriated and authorized for this IGSA are exhausted before the fiscal year concludes. No provision in this IGSA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

8.3. No Limitation. Nothing in this IGSA shall limit or prohibit the ability of either Party from contracting with other persons or entities for the provision of the same or similar services.

8.4. Billing and Payment. The mutually agreed upon service rates will be based on Attachment (1). NBSD will bill City as Chollas Clean Up Services are performed. City will pay any uncontested bills within 30 days of receipt of an invoice from the NBSD.

8.4.1. City will issue a check for services performed made payable to “United States Treasury.” Funds will be deposited/credited against the NRSW LOA that funded the service per 10 USC Sec 2679(c).

8.4.1.1. Payment from City will be mailed to: Commander, Navy Region Southwest, 750 Pacific Highway, San Diego CA 92132-0058 (Attn: N8 Leah Mcinnis)

9. Taxes. Pursuant to the Office of Management and Budget 2 CFR § 200.470, taxes that NBSD are legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. City will not reimburse NBSD for any taxes in which the legal incidence of the tax falls on City. Direct and indirect cost reconciliation will be performed annually in accordance with 2 CFR Part 200, Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards.

10. Term of IGSA. This IGSA shall be for a period of one (1) year beginning on July 1, 2024, following Agreement signatures by the Parties and City Attorney in accordance with San Diego Charter Section 40. The City may, with mutual acceptance by NBSD, extend this IGSA for two (2) additional (1) year periods.

City shall provide notice of any extension to NBSD at least sixty (60) days prior to the renewal date. Should NBSD agree to the extension, NBSD shall provide written

notice to the City agreeing to the extension, along with an updated Appendix A to provide estimated costs for the renewal period.

11. Modification of IGSA. This IGSA may be modified by written agreement of the Parties, which must be duly signed by their authorized representatives.
12. Suspension of IGSA. The United States reserves the right to suspend performance of the Agreement in event of emergencies, mobilizations, national security reasons, or for other reasons outside the control of the United States. In the event of a partial suspension, compensation for NBSD will continue subject to availability of funds for work not affected by the suspension.
13. TERMINATION
  - 13.1. Mutual. The IGSA may be terminated by mutual written agreement at any time. In the event of mutual termination, no rights, responsibilities, benefits, or liabilities shall accrue to either Party.
  - 13.2. Unilateral. This IGSA may be terminated unilaterally by either Party for its convenience upon 60 calendar days written notice to the POCs designated in this IGSA.
  - 13.3. Process. In the event of a termination, the Parties shall immediately negotiate a separate Termination Agreement and Schedule to define the roles and responsibilities and to mitigate impacts and all costs caused by the termination. With specific regard to a unilateral termination:
    - 13.3.1. Any obligations or debts incurred prior to termination shall become immediately due and payable by the withdrawing Party upon termination.
    - 13.3.2. The withdrawing Party shall not be entitled to a refund or credit for any sums paid or incurred under this IGSA prior to termination.
14. APPLICABLE LAW
  - 14.1. The Parties shall comply with all applicable Federal, State and local laws, Federal executive orders, and Federal rules and regulations applicable to its performance under this IGSA. If any federal statute expressly prescribes policies or requirements that differ from the terms and conditions of this IGSA, the provisions of the applicable federal statute shall govern. If there is a conflict between Federal law and State law or any municipal laws, Federal law will control.
  - 14.2. This IGSA is not governed by standard acquisition contracting methods of competitive bidding as delineated in the Federal Acquisition Regulations (FAR) and its supplements. However, if NBSD shall provide services

through a contract, the contract must be awarded through competitive procedures.

15. DISPUTES

15.1. If the Parties cannot agree on interpreting or applying a material term of this IGSA, the Parties agree to engage in an effort to reach mutual agreement in the proper interpretation of this IGSA, including amendment or termination of this IGSA, as necessary, or by escalating the dispute within their respective organizations.

15.2. As a condition precedent to a Party bringing any action for breach of this IGSA, that Party must first notify the other Party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the Parties. Each party must pay an equal share of any costs incurred by use of a third-party neutral.

15.3. If any third-party dispute or litigation relates to, or potentially affects a Party's ability to perform under this IGSA, the Parties agree to promptly notify each other of such dispute or litigation. The existence of such a dispute or litigation shall not excuse the Parties from performance pursuant to this IGSA.

15.4. If any dispute between the Parties arising out of this IGSA requires consideration of the law, the rights and obligations of the Parties shall be interpreted and determined according to the substantive and procedural laws of the United States of America.

16. Liability/Indemnification. Nothing in this IGSA is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever, in any third person not a Party to this IGSA.

16.1. Claims Arising from Acts or Omissions involving the City. City agrees to indemnify, protect, defend and shall hold and save NBSD free and harmless from any and all claims and damages alleged to be caused or caused by any act or omission of the City, its agents, officers or employees, arising from this IGSA, except for claims or damages due to the fault, negligence or willful misconduct of NBSD, its agents, officers or its employees.

16.2. Claims Arising from Acts or Omissions involving the United States. The Navy, as a sovereign instrumentality of the United States government, is precluded by federal law from agreeing to indemnify, defend, or hold harmless any party, including the City. Parties desiring to assert a claim against the Navy may do so,

but only as authorized by Federal law. In the event of any claims for injury to persons or damage to property asserted against the City which arise or are alleged to arise out of the negligent or wrongful acts or omissions of the United States, Department of the Navy, or their officers, employees, or agents in connection with the performance of, or the failure to perform, the obligations of this Agreement, the liability of United States therefore shall be determined, processed and adjudicated in accordance with the provisions of the Federal Tort Claims Act (28 U.S.C. § 1346(b)).

17. Self-Insurance. Both Parties agree that insurance obligations that may arise out of this Agreement, if any, may be fulfilled through self-insurance.
18. Cooperation of Parties. The Parties recognize that it is essential to cooperate fully concerning the handling of information and provision of services contemplated by this IGSA. In connection with this IGSA, the Parties therefore agree to provide any data, information, and documentation reasonably necessary for the other Party to perform its responsibilities under the terms of this IGSA.
19. Review by Legal Counsel. Each Party to this IGSA acknowledges and agrees that this IGSA has been reviewed by each Party's respective legal counsel.
20. Waiver. No waiver of the breach of any of the covenants, terms, restrictions, or conditions of this IGSA by either Party shall be construed to be a waiver of any succeeding breach of the same or other covenants, terms, restrictions, or conditions of this IGSA. No delay or omission of either Party in exercising any right, power, or remedy, provided in the event of default, shall be construed as a waiver, or acquiescence to the default, or be construed as a waiver of a variation of any of the terms of this IGSA.
21. Severability. If any term or portion of this IGSA is held to be invalid, illegal, void, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this IGSA shall continue in full force and effect.
22. Signature in Counterparts. This IGSA may be executed in counterparts by each of the Parties. For purposes of enforcement, true copies of signatures shall be deemed to be original signatures.
23. Entire IGSA. It is understood and agreed that this IGSA, to include Exhibit A incorporated here by reference, constitutes the entire IGSA between the Parties.

Exhibit A: Pricing Schedule

24. Effective Date. This IGSA takes effect on the date the last Party signs and the IGSA is approved by the San Diego City Attorney in accordance with San Diego Charter Section 40.



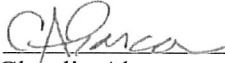
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Robert A. Heely Jr.  
CAPT, USN  
Commanding Officer

DATE: \_\_\_\_\_

City of San Diego

  
\_\_\_\_\_  
Claudia Abarca  
Director, Purchasing and Contracting

DATE: June 14, 2024

Approved as to form this 18<sup>th</sup> day of June, 2024  
Mara W. Elliot, City Attorney

By: Nicole M. Denow  
Deputy City Attorney

Exhibit A - Pricing Schedule

| Description                            | Hourly Rate |
|--|-------------|
| Personnel Hourly Wage (fully burdened) | \$51.03     |

Estimated Yearly Service (Year 1)

| Trash Collection and Disposal Breakdown    | Totals      |
|--|-------------|
| Personnel Hourly Wage (fully burdened)     | \$51.03     |
| Number of Personnel Assigned Per Cleanup   | 3           |
| Estimated Hours per Cleanup                | 80          |
| Total Estimated Personnel Cost Per Cleanup | \$12,246.00 |
| Estimated Equipment Cost per Cleanup       | \$9,400.00  |
| Total Estimated Cost Per Clean Up          | \$21,646.00 |

|   |             |
|---|-------------|
| Average Number of Collections per Year          | 2           |
| Estimated Annual Cost of Estimated Cleanup FY25 | \$43,292.00 |

Partnership Percentage Breakdown Example

| Year      | Estimated Total Cost per Service | NBSD Cost (25%) | City Cost (75%) |
|-----------|----------------------------------|-----------------|-----------------|
| Service 1 | \$21,646                         | \$5,411.50      | \$16,234.50     |
| Service 2 | \$21,646                         | \$5,411.50      | \$16,234.50     |
| Total     | \$43,292                         | \$10,823        | \$32,469        |