

SERVICES AGREEMENT

APGN INC., dba APG-NEUROS

[Asset Management and Maintenance service Plan –
Four (4) NX300-C050 and One (1) NX600-C070 Turbo Blowers]

On this ____ day of _____, 2020, the CITY OF RIVERSIDE, a California charter city and municipal corporation ("City"), and APGN INC., a Canadian corporation authorized to do business in California doing business as APG-NEUROS, ("Contractor"), mutually agree as follows:

1. **Scope of Services.** Contractor shall furnish all labor, materials and equipment for and perform the work of **Asset Management and Maintenance Service Plan for Four (4) NX300-C050 and One (1) NX600-C070 Turbo Blowers** ("Services"). Contractor shall perform the Services in accordance with the provisions and requirements of the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference.

2. **Term.** This Agreement shall be effective on the date first written above and shall remain effective for a term of **Five (5) years (Option "D" from Exhibit "B")** unless otherwise terminated pursuant to the provisions herein.

3. **Compensation.** City shall pay Contractor for the performance of the Services during the initial term of this Agreement a Contract Price not to exceed **Three Hundred Forty-Nine Thousand Two Hundred Fifty Dollars (\$349,250)**, unless an increase is agreed to by the parties. City shall pay Contractor for Services performed to City's satisfaction on an annual basis at the beginning of each period of coverage in accordance with the provisions of the Compensation Schedule attached hereto as Exhibit "B" and incorporated herein by this reference. If the term of the Agreement is extended, Contractor's compensation for the extended term shall be mutually agreed upon in writing by the parties.

4. **General Compliance with Laws.** Contractor shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of Services by Contractor pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations.

5. **Business Tax Certificate.** As a condition of this Agreement, Contractor shall secure a business tax certificate to operate in the City of Riverside pursuant to Chapter 5.04 of the Riverside Municipal Code, and shall also secure any other licenses or permits which may be required.

6. **Business Tax and Penalties.** Contractor acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which is owed, or which becomes owed, by Contractor to City, City reserves the right to withhold and offset said

amounts from any payments, refunds or reimbursements owed by City to Contractor under the Agreement. Notice of such withholding and offset shall promptly be given to Contractor by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

7. **Personnel.** Contractor shall furnish all personnel necessary to perform the Services and shall be responsible for their performance and compensation. The key personnel are listed in Exhibit "C," attached hereto and incorporated herein by reference. Contractor shall furnish qualified personnel to perform the Services.

8. **Assignment and Subcontracting.** Neither party shall assign any right, interest, or obligation in or under this Agreement to any other entity without prior written consent of the other party. In any event, no assignment shall be made unless the assignee expressly assumes the obligations of assignor under this Agreement, in a writing satisfactory to the parties. Contractor acknowledges that any assignment may, at the City's sole discretion, require City Manager and/or City Council approval. Contractor shall not subcontract any portion of the work required by this Agreement without prior written approval by the responsible City Contract Administrator. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including without limitation, the insurance obligations set forth in Section 11. The Contractor acknowledges and agrees that the City is an intended beneficiary of any work performed by any subcontractor for purposes of establishing a duty of care between any subcontractor and the City.

9. **Independent Contractor.** In the performance of this Agreement, Contractor, and Contractor's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the City of Riverside. Contractor acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to Contractor, or to Contractor's employees, subcontractors and agents. Contractor, as an independent contractor, shall be responsible for any and all taxes that apply to Contractor as an employer.

10. **Indemnification.** Contractor shall indemnify and hold harmless the City, and the City's employees, officers, managers, agents and council members from any liability, claim, damage or action whatsoever, arising out of the sole negligence or willful misconduct of Contractor, its officers, employees, subcontractors, agents or including but not limited to property damage, bodily injury, or death. Contractor shall defend, at its sole cost and expense, including but not limited to attorney fees, cost of investigation, defense and settlement or awards, the City and the City's employees, officers, managers, agents and council members in any such action or claim. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of City; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification of City. Contractor's obligations hereunder shall be satisfied when Contractor has provided to City the appropriate form of dismissal (or similar document) relieving the City from any liability for the action or claim involved. The specified insurance limits required

in this Agreement shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the City.

11. Insurance.

11.1 General Provisions. Prior to the City's execution of this Agreement, Contractor shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager or City Attorney, or a designee, unless such modification is prohibited by law.

11.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Contractor's indemnification obligations under Section 10 hereof.

11.1.2 Ratings. Any insurance policy or coverage provided by Contractor or subcontractors as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

11.1.3 Cancellation. The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

11.1.4 Adequacy. The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage as Contractor deems adequate, at Contractor's sole expense.

11.2 Workers' Compensation Insurance. By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Contractor shall file with City either 1) a certificate of insurance showing that such insurance is in effect, or that Contractor is self-insured for such coverage, or 2) a certified statement that Contractor has no employees, and acknowledging that if Contractor does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days' prior written notice before modification or cancellation thereof.

11.3 Commercial General Liability and Automobile Insurance. Prior to City's execution of this Agreement, Contractor shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as

required to insure Contractor against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Contractor. The City, and its officers, employees and agents, shall be named as additional insureds under the Contractor's insurance policies.

11.3.1 Contractor's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.

11.3.2 Contractor's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Contractor's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Contractor's performance of this Agreement, which vehicles shall include, but are not limited to, Contractor owned vehicles, Contractor leased vehicles, Contractor's employee vehicles, non-Contractor owned vehicles and hired vehicles.

11.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates along with additional insured endorsements acceptable to the City evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with City and shall include the City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

11.3.4 The insurance policy or policies shall also comply with the following provisions:

a. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.

b. The policy shall specify that the insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to the City.

12. **Termination.** City shall have the right to terminate any or all of Contractor's Services and work covered by this Agreement at any time upon thirty (30) calendar days' written notice to Contractor. In the event of such termination, Contractor shall submit Contractor's final written statement of the amount of services provided as of the date of such termination for payment

by the City.

Notwithstanding the foregoing, the City may terminate Contractor's performance of this Agreement upon five (5) calendar days' written notice if:

- (1) Contractor fails to promptly begin performance of the Services;
- (2) Contractor fails to perform the Services;
- (3) Contractor discontinues performance of the Services;
- (4) Contractor fails to make payment to employees in accordance with applicable law;
- (5) Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;
- (6) Contractor otherwise is guilty of breach of a provision of this Agreement;
- (7) Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations.
- (8) A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to this Agreement. Upon that person's appointment, City has, at its option and sole discretion, the right to immediately cancel the Agreement and declare it null and void.

13. **Non-Discrimination.** During Contractor's performance of this Agreement, Contractor shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, gender, gender identity, genetic information, gender expression, sex or sexual orientation, military and veteran status, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Contractor agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

14. **City's Right to Employ Other Consultants/Contractors.** City reserves the right to employ other Contractors in connection with the Services. If the City is required to employ another contractor to complete Contractor's work, due to the failure of the Contractor to perform, or due to the breach of any of the provisions of this Agreement, the City reserves the right to seek reimbursement from Contractor.

15. **Conflict of Interest.** Contractor, for itself and on behalf of the individuals listed in Exhibit "C", represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, affected by the above-described Services. Contractor further warrants that neither Contractor, nor the individuals listed in Exhibit "C" have any real property, business interests or income interests that will be affected by this project or, alternatively, that Contractor will file with the City an affidavit disclosing any such interest.

16. **Solicitation.** Contractor warrants that Contractor has not employed or retained any person or agency to solicit or secure this Agreement, nor has it entered into any agreement or understanding for a commission, percentage, brokerage, or contingent fee to be paid to secure this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement without liability and pay Contractor only for the value of work Contractor has actually performed, or, in its sole discretion, to deduct from the Agreement price or otherwise recover from Contractor the full amount of such commission, percentage, brokerage or commission fee. The remedies specified in this section shall be in addition to and not in lieu of those remedies otherwise specified in this Agreement.

17. **Prevailing Wage.** If applicable, pursuant to Section 1771 of the California Labor Code, Contractors are required to pay the general prevailing rates of per diem wages, overtime and holiday wages as determined by the Director of the Department of Industrial Relations and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing wage rates is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm, and is referred to and made a part hereof as though fully set forth herein. California Labor Code Sections 1725.5 and 1771.1 requiring all general contractors and subcontractors to be registered with DIR. Registration can be accomplished through the DIR website by using this link: <http://www.dir.ca.gov/PublicWorks/PublicWorks.html>.

18. **Notices.** Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

To City

City of Riverside – Public Works
Water Quality Control Plant
Attn: Brent Keaster
5950 Acorn Street
Riverside, CA 92504

To Contractor

APGN Inc., dba APG-Neuros
Attn: Julio Fajardo
1270 Michele-Hohec
Blainville, QCJ7C 5S4
Canada

19. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court of California, County of Riverside and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

20. **Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any action or failure to act constitute

an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be agreed in writing.

21. **Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

22. **Amendments.** This Agreement may be modified or amended only by a written agreement and/or change order executed by the Contractor and City.

23. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

24. **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

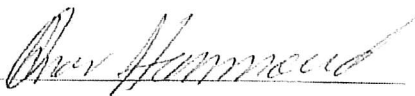
[SIGNATURES ON FOLLOWING PAGE.]

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

CITY OF RIVERSIDE, a California
charter city and municipal corporation

APGN Inc., a Canadian corporation
doing business as APG-Nueros

By: _____
City Manager

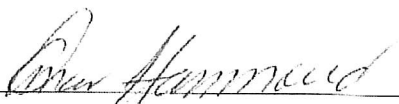
By: 
OMAR HAMMOUD
[Printed Name]

Attest: _____
City Clerk

CEO
[Title]

Certified as to Availability of Funds

By: 
Chief Financial Officer

By: 
OMAR HAMMOUD
[Printed Name]
CEO
[Title]

Approved as to Form:

By: Ruthann M. Salera
Ruthann Salera
Deputy City Attorney

EXHIBIT "A"

SCOPE OF SERVICES



June 5th, 2020

Ernest P. Marquez, Jr., PE
Principal Engineer-WQCP
City of Riverside/Wastewater Div.
5950 Acorn St.
Riverside, CA 92504
951-826-5409
EMarquez@riversideca.gov

Reference: 12-0051/17-0010 Riverside, CA / AM-2019-0735B4
Subject: Proposal for an Asset Management and Maintenance Service Plan

Equipment covered: Four (4) NX300-C050 and one (1) NX600-C070 Turbo Blowers.

Dear Mr. Marquez,

We are pleased to provide you with our proposal for an **Asset Management and Maintenance Service Plan** for our product in your facility.

This plan has been carefully designed to provide you with a peace-of-mind operation, protecting your turbo blowers from unscheduled events. Through the Asset Management, we incorporate the latest improvements and developments into your Turbo Blowers and proactively manage their health throughout their life cycle, maintaining the equipment technologically up to date and maximizing their efficiency. The Asset Management and Maintenance Service Plan provides protection from unexpected maintenance spending through the Extended Warranty as well as priority supply of spare parts when needed.

Our Plan includes:

- A. Asset Management – Upgrades
- B. Extended Warranty
- C. Remote Monitoring System
- D. Extended Preventive Routine Maintenance

A. Asset Management – Upgrades

The Asset Management maintains the Turbo Blower(s) technologically up to date.

Includes:

- Mandatory or recommended product modifications
- Recommended upgrades and new component developments
- Fine tuning of turbo blower(s) and aeration system
- Participation in manufacturer's maintenance and support development
- In the case of unscheduled events
 - After-hours technical assistance
 - Priority access to the field support team

- Priority on availability of parts and modules within 72 hours
- Priority on availability of replacement cores (loaners) at no charge to minimize downtime
- Field service report after each visit
- Refresher training on turbo blower preventive maintenance activities
- Dedicated Regional Manager for first response on field support
 - Regular meetings with customers to listen to current concerns and future needs
 - Regular training sessions for on-site personnel

B. Extended Warranty

The Extended Warranty eliminates the need to worry about capital and maintenance budget restrictions. It covers the cost of repairing or replacing major components when out of service.

Includes:

1. Blower core:
 - High efficiency impeller,
 - Permanent magnet synchronous motor,
 - Bump-foil air bearings,
 - Diffuser fan,
 - Motor casing
2. Variable speed drive/inverter
3. Input line reactor
4. Sine-wave (sinus) filter
5. Blower local control panel and Programmable Logic Controller (PLC) components
6. HMI touch-screen components
7. Internal vibration and absorption mounts
8. Vibration sensors and monitoring
9. Discharge expander (discharge cone)
10. Blow off by-pass valve and solenoid parts
11. Blow off silencer
12. Sound attenuating enclosure
13. Check valve seals and discs
14. Stop valve body seals and discs
15. External expansion joint

C. Remote Monitoring System

Remote Monitoring System and support as permitted by the customer

- Enables site managers to make better informed decisions through useable data of turbo blower operation.
- Fine tuning and monitoring of aeration system that allows for optimal turbo blower operation.
- Site can enable or disable access at anytime

EXHIBIT "B"
COMPENSATION

D. Extended Preventive Routine Maintenance

Our Extended Preventive Routine Maintenance is designed in accordance to the the standards of the annual health check and inspection outlined in the O&M manual.

- One (1) on-site maintenance and inspection visit by a manufacturer's Field Service Technician.
- Customized class room and hands-on training to your staff's needs.
- Inspect and clean or replace air intake filters (inside the turbo blower).
- Inspect and clean dirt as well as debris in enclosure - seal as required.
- Perform visual inspection of core.
- Measure core shaft torque and assess condition.
- Perform bump start alignment of the core bearings.
- Audible and visual inspection of unit to determine health of connections, valves and gaskets.
- Ensure PLC and HMI software is operational and suitable for the blower control.
- Verification of blower protection from surge or adverse operating conditions.
- Review and analyze PLC errors history, and provide recommendations.
- Verify the PLC and HMI software version including the new protection or optimization, and update to latest standard, if applicable.
- Inspect for loose electrical and mechanical connections and tighten them as required.
- Inspection of all electrical wiring for signs of overheating or wear.
- Verify sensors functionality and replace them as required.
- Inspect blower operation following factory specifications and adjust control parameters to adapt to the operating environment.
- Inspect paint and fasteners and apply touch-up or replace fasteners as required. Touch-up does not apply to areas larger than a quarter Dollar coin size.
- For liquid cooled models only
 - Check the level of coolant and top up as required.
 - Perform coolant flush (every 3 years)
 - Customer to dispose the old fluid.
- Field service report including a comprehensive check list for each blower.

Additionally, this plan includes:

- Remote Technical Support (by telephone), as required.
 - Response time within 1 business hour
 - Up to 150 hours of technical support
- Reporting on operation and diagnostics of operating units, when available for remote monitoring.
- 10% discount on spare parts and air filters for duration of the Asset Management and Service Plan.

Price:

- ❖ Option A: One (1) year of coverage on all five (5) turbo blowers: US \$94,175 per year.
- ❖ Option B: Two (2) years of coverage on all five (5) turbo blowers: US \$84,750 per year for two years.
- ❖ Option C: Three (3) years of coverage on all five (5) turbo blowers: US \$79,500 per year for three years.
- ❖ Option D: Five (5) years of coverage on all five (5) turbo blowers: US \$69,850 per year for five years.



Exclusions:

The following consumables and life limited parts are excluded from the coverage:

- Air filters elements
- BOV orifice diaphragm
- Coolant fluids
- Fuses
- Gaskets
- Hardware and fittings
- Power supplies
- Thermocouple and thermocouple transmitter
- Transformer 560/480 – 110/220 V
- Existing rusted areas on enclosure are not covered under the warranty

A pre-inspection of the turbo blowers may be required prior enrollment of the Asset Management and Maintenance Service Plan.

Proposal valid until July 31st, 2020.

We look forward to your consideration of our offer.

Sincerely,

Julio Fajardo
Aftermarket Sales

A 1270 Michèle-Bohec, Blainville, QC J7C 5S4 Canada
A 160 Banker Road, Plattsburgh NY 12901 United States
P 1-866-592-9482 ext. 2116
W www.apg-neuros.com

EXHIBIT "C"

KEY PERSONNEL



APG – Neuros Corp
160 Banker Road
Plattsburgh, NY 12901

Efficient & Affordable Technology

APG-Neuros Technicians for Completing Visits to Riverside

- Anthony Patrie / Test/Field Service Technician
- Brett Carnright / Test/Field Service Technician
- James Green / Regional Manager/Field Service Technician
- Jeremy LaCoe / Regional Manager/Field Service Technician
- Justin Yelle / Test/Field Service Technician
- Kevin Chamberlain / Test/Field Service Technician
- Marcus Hanson / Test/Field Service Technician
- Nathan Mathers / Test/Field Service Technician
- Thomas Letourneau / Test/Field Service Technician
- Tyler Brassard / Test/Field Service Technician