



City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2017-01466

November 21, 2017

Consent Item 10

Title: Agreement: On-Call Sewer and Storm Drainage Flow Monitoring

Location: Citywide

Recommendation: Pass a Resolution: 1) authorizing the City Manager or the City Manager's designee to execute a Professional Services Agreement with V&A Consulting Engineers, Inc. to provide on-call sewer and storm drainage flow monitoring services for an amount not-to-exceed \$750,000; and 2) approving budget related transfers.

Contact: Gary Gulseth, Project Manager (916) 808-1412; Brett Grant, Supervising Engineer (916) 808-1413; Dan Sherry, Engineering & Water Resources Division Manager, (916) 808-1419, Department of Utilities

Presenter: None

Attachments:

1-Description/Analysis

2-Agreement

3-Resolution

Description/Analysis

Issue Detail: Staff recommends Council approve an agreement with V&A Consulting Engineers, Inc. to provide on-call sewer and storm drainage flow monitoring services. The Department of Utilities (DOU) utilizes flow measurement data to determine existing pipe capacity, develop and update hydraulic models, update infrastructure master plans, and to identify pipelines within the wastewater and storm drainage systems in need of rehabilitation. The work for this agreement will include flow monitoring site assessments, equipment installation, site follow-up/maintenance, data retrieval, data reporting, equipment removal, and equipment repair. This request seeks approval of the estimated costs for up to three years of services as staff is not available or trained in using the specialized equipment needed to conduct the flow measurements.

Policy Considerations: City Council approval is required for professional service agreements of \$100,000 or more.

Economic Impacts: None.

Environmental Considerations: The proposed activity has been determined to be exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15306 – Information Collection. The activity consists of basic data collection, research, and resource evaluation which will not result in serious or major disturbance to an environmental resource. The current proposal involves the installation, maintenance, and removal of flow meters from existing sewer and storm drainage pipes and manholes to gather information for updating plans and models, and to assess potential rehabilitation needs.

Sustainability: The proposed project is consistent with the 2035 General Plan, as flow measurement data will be used to support projects which will reduce sanitary sewer outflows, improve service and reliability, and reduce energy-intensive maintenance efforts.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: On August 28, 2017, a Request for Proposals (RFP) (#P18141311001) was advertised and issued on PlanetBids, an electronic bid and contract management system, for on-call sewer and storm drainage flow monitoring. Three proposals were received from the following firms: SFE Global, Target1 Instruments LLC, and V&A Consulting Engineers, Inc.

A five-member evaluation team, including four DOU staff members and one private consultant from MPRE, Inc., evaluated the proposals for overall knowledge, expertise, and experience, with V&A Consulting Engineers, Inc. as the top ranked firm selected to provide the requested services.

Financial Considerations: The proposed on-call agreement has an initial one-year term, with a maximum of two optional annual renewals. The total estimated project cost for the initial one-year term is \$450,000, and the estimated project cost for the two optional annual renewals is \$150,000 each year.

The costs for the initial one-year term includes \$300,000 in flow monitoring within the combined sewer system, in order to support the combined sewer system master planning efforts. The additional \$150,000 in flow monitoring is to support the separated sewer system master planning effort. Flow monitoring will only be conducted within the separated sewer system on years two and three at a cost of \$150,000 each year.

A \$300,000 budget transfer from the Combined Master Plan Program is needed to provide sufficient funding for the initial one-year term, recommended as follows:

Name	Project No.	Fund No.	Amount (USD)
Combined Master Plan Program	I14610300	6006	(\$300,000)
Flow Monitoring/Hydrology Program	I14610100	6006	\$300,000

With the recommended budget transfer approval, sufficient funds will be available in the Flow Monitoring/Hydrology Program Multi-Year Operating Project (I14610100) for an initial one-year term. Funding for the optional annual renewals are subject to funding availability in the applicable fiscal year.

There are no General Funds planned or allocated for this project.

Local Business Enterprise (LBE): V&A Consulting Engineers, Inc. is not an LBE, but will subcontract with an LBE firm for traffic control and/or general labor services, to meet the minimum LBE participation requirement

PROJECT NAME: On-Call Sewer and Storm Drainage Flow Monitoring
AGREEMENT TERM: 1 Year
AUTHORIZED RENEWALS: 2
DEPARTMENT: Utilities
DIVISION: Engineering

CITY OF SACRAMENTO

**PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTS, LANDSCAPE
ARCHITECTS, PROFESSIONAL ENGINEERS,
AND PROFESSIONAL LAND SURVEYORS**

THIS AGREEMENT is made at Sacramento, California, as of _____, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

*V&A Consulting Engineers, Inc.
1000 Broadway, Suite 320
Oakland, CA 94607*

("CONTRACTOR"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide the services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of the services: (a) CONTRACTOR notifies CITY and CITY agrees that the services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
2. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for CONTRACTOR to perform services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.

4. **General Provisions.** The General Provisions set forth in Exhibit D, which include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over those terms or conditions.
5. **Non-Discrimination in Employee Benefits.** This Agreement may be subject to the requirements of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. A summary of the requirements of Sacramento City Code Chapter 3.54, entitled "Requirements of the Non-Discrimination in Employee Benefits Code," can be viewed at: <http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements>. By signing this Agreement, CONTRACTOR acknowledges and represents that CONTRACTOR has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.54. If requested by CITY, CONTRACTOR agrees to promptly provide such documents and information as may be required by CITY to verify CONTRACTOR's compliance. Any violation by CONTRACTOR of Sacramento City Code Chapter 3.54 constitutes a material breach of this Agreement, for which the CITY may terminate the Agreement and pursue all available legal and equitable remedies.
6. **Considering Criminal Conviction Information in the Employment Application Process.** This Agreement may be subject to the requirements of Sacramento City Code Chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process. A summary of the requirements of Sacramento City Code Chapter 3.62, entitled "Ban-The-Box Requirements," can be viewed at: <http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements>. By signing this Agreement, CONTRACTOR acknowledges and represents that CONTRACTOR has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62. If requested by CITY, CONTRACTOR agrees to promptly provide such documents and information as may be required by CITY to verify CONTRACTOR's compliance. Any violation by CONTRACTOR of Sacramento City Code Chapter 3.62 constitutes a material breach of this Agreement, for which the CITY may terminate the Agreement and pursue all available legal and equitable remedies. CONTRACTOR agrees to require its subcontractors to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62, and include these requirements in all subcontracts covered by Sacramento City Code Chapter 3.62.
7. **Additional Requirements for Surveying, Material Testing, and Inspection Services.** If this Agreement includes any land surveying, material testing, or inspection services provided for a City construction project, during the design, pre-construction, construction, or post-construction phases of the project, the Contractor and any subcontractor or subconsultant performing any such services shall comply with the provisions specified in Exhibit E.
8. **Authority.** The person signing this Agreement for CONTRACTOR represents and warrants that he or she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.

9. **Exhibits.** All exhibits referred to herein and attached hereto, and the “Requirements of the Non-Discrimination in Employee Benefits Code” and “Ban-The-Box Requirements” described above, are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: Howard Chan, City Manager

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Attachments

Exhibit A	Scope of Service
Exhibit B	Fee Schedule/Manner of Payment
Exhibit C	Facilities/Equipment Provided
Exhibit D	General Provisions
Exhibit E	Additional Requirements for Surveying, Material Testing, and Inspection Services

CONTRACTOR:

V&A Consulting Engineers
NAME OF FIRM

94-2995304
Federal I.D. No.

C1299775
State I.D. No.

108123
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (check one):

- ☐ Individual/Sole Proprietor
☐ Partnership
☒ Corporation (may require 2 signatures)
☐ Limited Liability Company
☐ Other (please specify: _____)

Glenn H. Willson
Signature of Authorized Person

Glenn H. Willson, P.E.
Print Name and Title Western Regional Manager

Additional Signature (if required)

Print Name and Title

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Gary Gulseth/Senior Engineer
1395 35th Avenue
Sacramento, CA 95822
(916) 808-1412/(916) 808-1497/ggulseth@cityofsacramento.org*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Kevin Krajewski
V&A Consulting Engineers, Inc.
1000 Broadway, Suite 320
Oakland, CA 94607
(510) 903-6600/(510) 903-6601/kkrajewski@vaengineering.com*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address or e-mail address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. Insurance. Insurance requirements are specified in Exhibit D, Section 11.

3. Conflict of Interest Requirements.

- A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

- (1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;

- (2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

- B. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: _____ yes ✓ no *[check one]*

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";
- (2) Cause these individuals to file with the CITY Representative the "assuming office" statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. **Scope of Services.**

The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

5. **Time of Performance.** The services described herein shall be provided for a period of one year from the date of this executed agreement, with two optional annual renewals. Extensions of the contract in succeeding annual renewals shall be subject to City budget availability for each year.

ATTACHMENT 1 TO EXHIBIT A

PROPOSED SCOPE OF WORK

The intent of this proposed scope of work is to provide the Department of Utilities (DOU) with sewer and/or drainage flow data at various locations within the City on an as-needed basis. Tasks 1, 2 and 3 of this proposed scope of work are intended to act only as a guide. The consultant should feel free to recommend other tasks and/or approaches to the project. Changes to the proposed scope of work shall first be approved by the DOU.

Task 1.0 Project Management

The Consultant shall provide project management to ensure the project is completed on time and within budget and meets the goals described in Task 4.0. This task shall include:

- Monthly invoices with detailed budget status information on a subtask basis, and a brief Progress Report describing project activities and expenditures during the period covered by the invoice, project schedule, work progress to date and budget status.
- Initial meeting with City staff.

Throughout the course of the project, the Consultant shall provide qualified staff to complete all tasks. The staff shall be trained in the use of flow monitoring equipment, including the use of appropriate safety procedures. Training documentation and Standard Operating Procedures shall be submitted to the City within one week of contract approval. Procedures shall meet or exceed Cal-OSHA and Federal Department of Transportation MUTCD with the California Supplement requirements. This includes requirements for Confined Space Entry, Injury and Illness Prevention, and Temporary Traffic Controls.

Task 2.0 Site Assessment

City staff will initially identify the location of temporary flow monitoring sites needed to measure flows for various projects throughout the City. The Consultant shall then perform a site visit to the selected monitoring sites. The purpose of the site visit will be to evaluate the suitability of the sites for flow monitoring in regards to site access, traffic control, and appropriate flow monitoring technology. Alternative flow monitoring sites should be proposed by the Consultant to city staff if the initial sites are determined to not be suitable for flow monitoring. The results of the evaluation shall be summarized in a brief technical memo to the City.

Task 2.0 Deliverable: Site Evaluation Technical Memos within two weeks of written notification of potential flow monitoring site locations.

Task 3.0 Equipment Installation, Site Maintenance and Equipment Removal

Consultant shall utilize City-owned ISCO 2150 flow meters and/or approved consultant supplied flow meters that employ average or peak continuous wave Doppler technologies and/or custom compound weir flow monitoring technologies.

Each meter shall be tested in the shop prior to field installation, following manufacturer recommended methods. The accuracy, linearity, and stability of each sensor shall be verified and documented. Parts such as batteries and desiccant cartridges shall be replaced as needed prior to installation. Meters shall only be placed in the field if shop testing verifies the Data Availability/Accuracy Goal in Task 4.0 can be met.

Should a City-owned meter be found in need of repair, the Consultant shall notify the City, submit the meter to the manufacturer for repair, and verify the adequacy of repairs after return from the manufacturer.

The Consultant shall follow all Occupational Health and Safety Administration regulations concerning Personal Protective Equipment, confined-space entry, exposure to blood borne pathogens and traffic protection.

Task 3.1 Installation

This task includes work to install and calibrate flow monitoring equipment in temporary locations throughout the City.

Data logging equipment shall be mounted to the manhole wall or ladder rung (if present) and be capable of 1, 5, and 15-minute data recording rates. The data loggers shall be set to the 5-minute recording interval, unless otherwise requested by city staff.

Upon installation, the instrument shall be site calibrated according to manufacturer recommendations to account for site conditions that may offset sensor measurements. The Consultant shall take all required steps to resolve discrepancies between manual and meter-based measurements that affect the data quality goals described in Task 4.0. The Consultant shall notify the City immediately if Consultant determines that site conditions or instrument malfunctions will reduce data quality and recommend corrective measures.

Task 3.2 Site Maintenance

This task includes maintenance of the flow monitoring sites, data collection, and data review activities that support the data quality goals described in Task 4.0.

The Consultant shall follow the flow meter manufacturer's recommended maintenance procedures. At a minimum, complete the following activities beginning within one (1) week of the installation of a flow monitoring device and continue as necessary to support the data quality goals described in Task 4.0.

- Field verification of equipment measurements.
- Download of the collected flow monitoring data including graphical records for review of any data discontinuity.
- Review of scatter plots of velocity/depth data consistency for area-velocity meter sites to verify meter accuracy.
- Data check to ensure a proper diurnal pattern is established.
- Check of the minimum and maximum flows for possible drift.
- Check batteries and replace if necessary.
- Clean sensor equipment if necessary.
- Update appropriate inspection documentation.

Any discrepancies or problems with the performance of the flow monitoring equipment shall be documented and corrective actions taken. Upon identifying anomalous data, the Consultant shall promptly undertake corrective actions. The quality control activities and any subsequent corrective action shall be reported to City staff whether or not the problems can be resolved. If a problem is not resolved, the technician shall not leave the site until a corrective action plan is developed. The Consultant shall give the corrective plan high priority to correct the issue and start providing good data within 24 hours. Consultant shall notify City staff immediately upon determination that this objective cannot be met for a given site.

Task 3.3 Decommissioning

Site decommissioning is the process of removing equipment from a flow monitoring site. The Consultant shall provide all labor, material and equipment required during the removal of flow monitoring equipment from the site. Prior to removal, the Consultant shall complete the site maintenance activities described in task 3.2.

Task 3.0 Deliverables:

1. Notification of need for City-owned meter repair within one week of determination.
2. Manufacturer documentation of repair submitted with monthly invoice.
3. Installation Report with the following information at a minimum:
 - A site location map
 - Photographs of the monitoring equipment
 - Documentation of observed flow characteristics
 - Measurements of the physical dimensions of the flow monitoring site, including dimensions of manholes and pipes and the location of the flow monitoring equipment
 - Shop testing documentation
 - Documentation of the initial manual and meter-based measurements used for meter calibration
4. Monthly Data Reports with the following information at a minimum:
 - Both raw (unmodified, as collected from the equipment) and processed (modified by quality control measures) data. The data shall be provided in electronic Microsoft Excel 2010 format.
 - Graphs of 5-minute depth, velocity (for AV sites), and flow data measured for each site. The data shall be provided in electronic Microsoft Excel 2010 format.
 - Scattergraphs of the 5-minute velocity and depth data for each site, including a summary of the pipe performance based on an examination of each sites scattergraph.
 - Documentation of maintenance activities, field measurements or calibrations, corrective actions, etc.
 - Table summarizing compliance (or non-compliance) with the Data Availability/Accuracy Goal (Task 4.0) at each site for the previous month.

City staff shall review the data and compliance summaries and determine at that time if flow monitoring at a particular site shall be continued.

Task 4.0 Data Availability/Accuracy Goal

The City has set a goal of acquiring flow data that is available and accurate 90% of the time. The availability of data is determined by the number of data points measured in a month divided by the total number of 5-minute periods in the month. Accurate flow data is defined as measurements

that are presumed to be within 5% of actual flows based on manual verification field measurements.

Each month, the Consultant shall summarize compliance (or non-compliance) with the goal for each of the sites (see Task 4.0). The City maintains the right to independently assess and revise the Consultant's compliance summary based upon an analysis of the data. If the Data Availability/Accuracy goal is not met for one or more sites, that month's compensation for the site(s) will be adjusted according to the guidelines set forth below.

Data Availability/Accuracy Goal and Cost Modifications

Percent of Data Available and Accurate for Site	Percent Reduction in Compensation for Site
90 – 100 %	None
80 – 90 %	50 %
70 – 79.9 %	70 %
60 – 69.9 %	80 %
< 59.9 %	100 %

Consultant shall be exempt from financial penalties and non-compliance where the Data Availability/Accuracy Goal non-compliance is caused through no fault of Consultant or where the Consultant has not recommended flow monitoring at a certain site and the City has exempted the Consultant from financial penalties and non-compliance in writing at a particular site. This shall include and is not limited to, whether intentional or otherwise, vandalism, tampering and damage to flow monitoring stations.

EXHIBIT B
PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$750,000. This total sum includes \$450,000 for the initial one-year term and \$150,000 for each of two optional CITY authorized renewal term.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job/Project Name
 - (2) CITY's current Purchase Order Number
 - (3) CONTRACTOR's Invoice Number
 - (4) Date of Invoice Issuance
 - (5) Work Order Number (if applicable)
 - (6) CITY representative identified on the Purchase Order
 - (7) CONTRACTOR's remit address for payment
 - (8) Description of services billed under Invoice
 - (9) Amount of Invoice (itemize all authorized Reimbursable Expenses)
 - (10) Total Billed to Date under Agreement
 - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described above.

D. Submitting Invoices:

- (1) **Email.** Submit email invoices and any attachments to:

apinvoices@cityofsacramento.org

- (2) **Postal mail.** If emailing invoices and attachments is not an option, mail to:

A/P PROCESSING CENTER
CITY OF SACRAMENTO
915 I ST FL 4
SACRAMENTO CA 95814-2608

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing the Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other consultants to perform the Additional Services.
6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make the records available for inspection and audit by representatives of the CITY upon reasonable written notice.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of the payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

Attachment 1 to Exhibit B

FEE SCHEDULE

TASK	TYPE OF WORK	SPECIFIC DETAILS	Meters Installed/Task Order ⁽¹⁾			
			1	2 to 5	5 to 10	10+
City Owned Wireless Equipment						
4	Flow Monitoring Station Installations	Includes planning, site assessment, meter prep and testing, installation, calibration, and review of initial data to ensure accuracy (per site)	\$6,000	\$3,000	\$2,400	\$1,920
5	Maintenance, Data QA/QC, Data Acquisition, Reporting	Includes monthly maintenance, data acquisition, data QA/QC, wireless data plan, and monthly reporting. (per site/month)	\$725	\$625	\$525	\$450
6	Monitoring Station Decommissioning	Decommissioning and Meter Service (per site)	\$1,500	\$750	\$600	\$480
Consultant Provided Wireless Equipment						
7	Flow Monitoring Station Installations	Includes planning, site assessment, meter prep and testing, installation, calibration, and review of initial data to ensure accuracy (per site)	\$6,000	\$3,000	\$2,400	\$1,920
8	Maintenance, Data QA/QC, Data Acquisition, Reporting	Includes providing AV flow meters, monthly maintenance, data acquisition, data QA/QC, wireless data plan and monthly reporting. (per site/month)	\$1,525	\$1,425	\$1,325	\$1,250
9	Maintenance, Data QA/QC, Data Acquisition, Reporting	Includes providing non-contact ISCO LaserFlow flow meters, monthly maintenance, data acquisition, data QA/QC, wireless data plan and monthly reporting. (per site/month)	\$1,925	\$1,825	\$1,725	\$1,650
10	Monitoring Station Decommissioning	Decommissioning and Meter Service (per site)	\$1,500	\$750	\$600	\$480
Additional Task Items						
11	Additional Task Items as Required	Sr. Project Manager	\$259		per/hour	
12	Additional Task Items as Required	Confined Space Entry Crew	\$476		per/hour	
13	Additional Task Items as Required	Shop Labor for items such as meter repairs	\$130		per/hour	
14	Additional Task Items as Required	Misc. incidentals if necessary (shipping, traffic control, etc.)	Cost plus 10%		per/item	

1. The fees shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals for doing all work necessary to complete the items. Fees assume that meters will be installed for a period of at least 1 month at manholes located in non-arterial streets with simple access. Consultant is responsible for obtaining traffic control permit(s) and providing the necessary traffic control during installation, maintenance and decommissioning of meter(s).

**EXHIBIT C
PROFESSIONAL SERVICES AGREEMENT**

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*] _____ Not furnish any facilities or equipment for this Agreement;

or

_____ ✓ Furnish the following facilities or equipment for the Agreement
[*list, if applicable*]:

1. Fourteen (14) ISCO 2150 flow meters

EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform

services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A

violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. Standard of Performance. CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real, or intellectual property, or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to, or relate to any negligent act or omission, recklessness, or willful misconduct of CONTRACTOR, its sub-consultants, subcontractors, or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled, or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits, or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the CITY.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of CONTRACTOR, its sub-consultants, and

subcontractors, products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors, and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than one million dollars (\$1,000,000) per accident. The policy shall provide coverage for owned, non-owned, and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Excess Insurance: The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage; provided that any umbrella or excess insurance shall contain, or be endorsed to contain, a provision that it shall apply on a primary basis for the benefit of the CITY, and any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of such umbrella or excess coverage and shall not contribute with it.

- (4) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Workers' Compensation policy shall include a waiver of subrogation in favor of the CITY. If no work or services will be performed on or at CITY facilities or CITY Property, the CITY Representative may waive this requirement by selecting the option below:

Workers' Compensation waiver of subrogation in favor of the CITY is not required. _____ (CITY Representative initials)

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

- (5) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions, or malpractice with limits of not less than one million (\$1,000,000) dollars. Professional Liability (Errors and Omissions) insurance:

Is ___✓___ Is not _____ [check one] required for this Agreement.

If required, such coverage must be continued for at least ___3___ year(s) following the completion of all Services and Additional Services under this Agreement. The retroactive date must be prior to the date this Agreement is approved or any Services are performed.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors; products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors; and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors.
- (2) Automobile Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, CONTRACTOR's insurance coverage, including excess insurance, shall be primary insurance as respects CITY, its officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees, or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

City of Sacramento
c/o EXIGIS LLC
P.O. Box 4668 ECM- #35050
New York, NY 10168-4668

Insurance certificates also may be faxed to (888) 355-3599 , or e-mailed to:
certificates-sacramento@riskworks.com

- (3) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. Equal Employment Opportunity. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for

Page 25 of 30

work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.

- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

- 13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
- 14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- 15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

- 16. Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
- 17. Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
- 18. Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
- 19. Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
- A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
 - B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
 - C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.
- 20. Local Business Enterprise Participation Requirements.** If the Request for Qualifications or Request for Proposals issued for this Agreement included Local Business Enterprise Participation Requirements (the "LBE Requirements"), CONTRACTOR shall comply with the LBE Requirements, which are by this reference incorporated as if set forth fully herein. The LBE Requirements also can be viewed at:
- <http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements>.

EXHIBIT E
PROFESSIONAL SERVICES AGREEMENT

ADDITIONAL REQUIREMENTS FOR SURVEYING, MATERIAL TESTING, AND INSPECTION SERVICES

Land surveying, material testing, and inspection services provided for a City construction project during the design, pre-construction, construction, or post-construction phases of the project constitute “public works” under California Labor Code section 1720 *et seq.*, and are subject to the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and its implementing regulations set forth in Title 8 of the California Code of Regulations. If this Agreement includes any of these services (hereafter collectively referred to as “Public Work”), the Contractor and any subcontractor or subconsultant performing any Public Work shall comply with all applicable requirements of the California Labor Code and the Sacramento City Code, including the following requirements:

1. **Workers’ Compensation Certification.** If this Agreement is for the performance of any Public Work, in accordance with California Labor Code section 1861 the Contractor shall sign the following certification:

I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor Signature

2. **DIR Registration.** California Labor Code section 1725.5 requires the Contractor and any subcontractor or subconsultant performing any Public Work under this Agreement to be currently registered with the California Department of Industrial Relations (DIR), as specified in Labor Code section 1725.5. Labor Code section 1771.1 provides that a contractor or subcontractor/subconsultant shall not be qualified to engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5.

To be completed by the City Representative if this Agreement is for the performance of any Public Work:

Contractor DIR registration #: _____

Prior to the performance of Public Work by any subcontractor or subconsultant under this Agreement, Contractor shall furnish City the subcontractor or subconsultant’s current DIR registration number.

3. **Payment of Prevailing Wages.** If this Agreement is for the performance of any Public Work, and the amount of the Agreement is more than \$25,000, Contractor and any subcontractor or subconsultant performing any Public Work shall comply with the provisions of Sacramento City Code section 3.60.180 and applicable provisions of California Labor Code section 1770 *et seq.*, which require, among other things, that the Contractor and subcontractor(s)/subconsultant(s) pay not less than the prevailing rate of wages for Public Work, as determined by the Director of the California DIR pursuant to Labor Code section 1773. For any Public Work performed under this Agreement, Contractor and every subcontractor or subconsultant shall maintain payroll records and submit certified payroll records and other labor compliance documentation electronically to City staff when and as required by City. In addition, Labor Code section 1771.4 requires the Contractor and any subcontractor or subconsultant performing any Public Work to furnish electronic payroll records directly to the Labor Commissioner.

This Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations, as specified in Labor Code section 1771.4. The Contractor and any subcontractor or subconsultant performing Public Work will be subject to withholding and penalties for violation of prevailing wage requirements in accordance with applicable law, including Labor Code sections 1726, 1741, 1771.5, and 1775, and City Code section 3.60.180. Questions regarding the City's Labor Compliance Program should be directed to the contracts staff for the City Department issuing this Agreement.

4. **Apprentices.** If this Agreement is for the performance of any Public Work, and the amount of the Agreement is \$30,000 or more, the Contractor and any subcontractor or subconsultant performing any Public Work under this Agreement shall comply with Sacramento City Code section 3.60.190, section 1777.5 *et seq.* of the California Labor Code, and implementing regulations set forth in Title 8 of the California Code of Regulations, governing the employment of apprentices. The Contractor and any subcontractor or subconsultant performing Public Work will be subject to penalties for apprenticeship violations in accordance with Labor Code section 1777.7.
5. **Working Hours.** If this Agreement is for the performance of any Public Work, Contractor and any subcontractor or subconsultant performing any Public Work shall comply with, and be subject to enforcement under, the provisions of Sacramento City Code section 3.60.180 and California Labor Code section 1810 *et seq.*, governing the working hours of employees performing Public Work.
6. **Subcontractors.** The Contractor shall include these provisions in every subcontract or subagreement for every lower-tier subcontractor or subconsultant performing Public Work under this Agreement.

RESOLUTION NO. 2017-

Adopted by the Sacramento City Council

November 21, 2017

On-Call Sewer and Storm Drainage Flow Monitoring

BACKGROUND

- A. The Department of Utilities (DOU) utilizes flow measurement data to determine existing pipe capacity, develop and update hydraulic models, update infrastructure master plans, and to identify pipelines within the wastewater and storm drainage systems in need of rehabilitation.
- B. Staff is not available or trained in using the specialized equipment needed to conduct the flow measurements.
- C. On August 28, 2017, a Request for Proposals (#P18141311001) was issued for on-call sewer and storm drainage flow monitoring services. Three firms submitted proposals. V&A Consulting Engineers was selected as the top-ranked firm.
- D. The professional services agreement with V&A Consulting Engineers is for an amount not-to-exceed \$750,000, with an estimated project cost of \$450,000 for the initial one-year term of this agreement. Two optional annual renewals are authorized, subject to funds available in the applicable fiscal year
- E. A budget augmentation of \$300,000 is required to provide sufficient funds for On-Call Flow Monitoring (I14610100).

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or the City Manager's designee is authorized to execute a professional services agreement with V&A Consulting Engineers, Inc. for on-call sewer and storm drainage flow monitoring services for an amount not-to-exceed \$750,000.
- Section 2. The following budget transfer is approved:

Name	Project No.	Fund No.	Amount (USD)
Combined Master Plan Program	I14610300	6006	(\$300,000)
Flow Monitoring/Hydrology Program	I14610100	6006	\$300,000