Title: Agreements: Purchase of Mass Spectrometers from Thermo Electron North America LLC & Agilent Technologies (Two-Thirds Vote Required)

Location: Citywide

Recommendation: Adopt a Resolution authorizing the City Manager or City Manager’s designee to: 1) suspend competitive bidding in the best interests of the City; and 2) execute an Agreement with Thermo Electron North America LLC for the purchase of a Gas Chromatograph - Mass Spectrometer (GC-MS) in an amount not-to-exceed $107,030; and 3) execute an Agreement with Agilent Technologies for the purchase of a Inductively Coupled Plasma - Mass Spectrometer (ICP-MS) in an amount not-to-exceed $166,199.

Contact: Mark Severeid, Superintendent, (916) 808-8667; Stacy Larkin, Program Analyst, (916) 808-6356; William Busath, Director, (916) 808-1434; Department of Utilities

Presenter: None

Attachments:
1-Description/Analysis
2-Resolution
3-Supplies Agreement: Thermo Electron North American LLC
4-Supplies Agreement: Agilent Technologies
Description/Analysis

**Issue Detail:** Due to the age of the current mass spectrometer equipment, servicing and parts replacement issues, the Water Quality Lab needs to purchase new Gas Chromatograph – Mass Spectrometer (GC-MS) and Inductively Coupled Plasma – Mass Spectrometer (ICP-MS) systems to stay compliant with drinking water regulations to ensure public health.

**Policy Considerations:** City Council approval is required for contracts of $100,000 or more.

**Economic Impacts:** None

**Environmental Considerations:** The Community Development Department, Environmental Services Manager has determined that the proposed activity is not a project pursuant to the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15378(b). The activity is a continuing administrative or maintenance activity, such as the purchase of supplies, and is not subject to CEQA. CEQA Guidelines Section 15060(c)(3).

**Sustainability:** Equipment purchased under this contract complies with Section 8 of the City’s Sustainability Master Plan to continue to treat and protect the quality of the City’s drinking water.

**Commission/Committee Action:** Not Applicable

**Rationale for Recommendation:** In order to stay compliant with Title 22 of the California Code of Regulations, the City of Sacramento is mandated to perform routine and consistent monitoring of its drinking water to ensure public health. The GC-MS and the ICP-MS are analytical instruments used for the analysis of drinking water samples to demonstrate compliance with Title 22.

The existing GC-MS system was purchased in 2007 and originally slated for replacement in 2017. The existing ICP-MS system was purchased in 2009 and was originally slated for replacement in 2016. Careful maintenance and upkeep by the City's chemists combined with regular manufacturer service has enabled the City to keep the instruments in operation beyond their useful life. However, the instruments are no longer supported by their manufacturers. Difficulty with procurement of parts and service make the instruments unreliable and unsuitable for regulatory compliance testing. The new GC-MS and ICP-MS will also deliver increased sensitivity and reliability over the outdated instruments.

Replacement instruments were selected by the City's Water Quality Chemists. For each instrument, selection was based on suitability for the workload, analytical requirements of the
City’s Water Quality Laboratory, and on each manufacturer’s industry-wide reputation for reliability and excellent customer support based on our survey of known users.

City Code Section 3.56.230 allows the City Council to suspend competitive bidding when the City Council determines that it is in the best interest of the City to do so. These two specific instruments have been tested and used by other agencies and have the capabilities needed to stay compliant with Title 22 of the California Code of Regulations. The vendors are extending the same pricing to the City of Sacramento as they did with other agencies. Approving these purchases will allow the Department to perform routine and consistent monitoring of its drinking water to ensure public health.

**Financial Considerations:** Sufficient funds are available in the Drinking Water Quality 3330 Project (Z14001500) to execute these agreements with Thermo Electron North American LLC for a not-to-exceed amount of $107,030, and Agilent Technologies for a not-to-exceed amount of $166,199.

There are no general funds allocated or planned for this project.

**Local Business Enterprise (LBE):** Thermo Electron North American LLC and Agilent Technologies are not LBEs. The minimum LBE participation requirement is waived as the City has suspended competitive bidding and utilized an alternate procurement method to select a vendor.
RESOLUTION NO. 2019-XXXX

Adopted by the Sacramento City Council

XXXXXXXX, 2019

Purchase of Mass Spectrometers from Thermo Electron North America LLC & Agilent Technologies

BACKGROUND

A. The Department of Utilities (DOU) is mandated to perform routine and consistent monitoring of the City’s drinking water to ensure public health and maintain compliance with Federal and State regulations.

B. Two of the analytical instruments used by the City’s Water Quality Laboratory for the analysis of drinking water samples, the Gas Chromatograph-Mass Spectrometer (GC-MS) and the Inductively Coupled Plasma-Mass Spectrophotometer (ICP-MS), need replacement. Careful maintenance and upkeep by the City’s chemists combined with regular manufacturer service have kept the instruments in operation through their useful life. However, both instruments are no longer supported by their respective manufacturers. Difficulty with procurement of parts and service make the instruments unreliable and thus unsuitable for regulatory compliance testing.

C. City Code Section 3.56.230 allows the City Council to suspend competitive bidding, on a 2/3 vote, when the Council determines that it is in the best interest of the City to do so. It is in the City’s best interest to suspend competitive bidding for the purchase of a GC-MS from Thermo Electron North America LLC and an ICP-MS from Agilent Technologies because the City Water Quality Laboratory’s current instruments are now over 10 years old and are no longer supported by their respective manufacturers. These replacement instruments were selected by the City’s Water Quality Chemists. For each instrument, selection was based on suitability for the workload, analytical requirements of the City’s Water Quality Laboratory, and on each manufacturer’s industry-wide reputation for reliability and excellent customer support based on our survey of known users. These two specific instruments have been tested and used by other agencies and have the capabilities needed to stay compliant with Title 22 of the California Code of Regulations. The vendors are extending the same pricing to the City of Sacramento as they did with other agencies. Approving the agreements will allow DOU to replace the current equipment with equipment that is suitable for the workload and analytical requirements of the City’s Water Quality Laboratory.

D. Sufficient funding is available in the Drinking Water Quality CIP (Z14001500) for these purchases.
BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Competitive bidding is suspended for the purchase of a GC-MS from Thermo Electron North America LLC and an ICP-MS from Agilent Technologies.

Section 2. The City Manager or the City Manager’s designee is authorized to execute a Supplies Agreement in an amount not-to-exceed $107,121 with Thermo Electron North America LLC for the purchase of a Gas Chromatograph - Mass Spectrometer (GC-MS) and to execute a Supplies Agreement in an amount not-to-exceed $166,199 with Agilent Technologies for the purchase of a Inductively Coupled Plasma - Mass Spectrometer (ICP-MS). Funding for these purchases is available in the Drinking Water Quality CIP (Z14001500).

Adopted by the City of Sacramento City Council on May 14, 2019, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Attest:

*The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.*
PROJECT #: 
PROJECT NAME:  Purchase of ISQ 7000 GC-MS
DEPARTMENT:  Utilities
DIVISION:  Water Operations & Maintenance

CITY OF SACRAMENTO
SUPPLIES AGREEMENT

THIS AGREEMENT is made at Sacramento, California, as of ________________________, by
and between the CITY OF SACRAMENTO, a municipal corporation (“CITY”), and

Thermo Electron North America LLC
5225 Verona Road
Madison, WI 53711
Phone: (916) 753-4844/E-mail: alexander.james@thermofisher.com

(“CONTRACTOR”), who agree as follows:

1. Contract. The Contract shall consist of this Agreement and each of the following documents (if
applicable), which are incorporated herein by reference:

Contractor’s Bid Proposal Form
Technical Specifications
Local Business Enterprise (LBE) Requirements*
Requirements of the Non-Discrimination in Employee Benefits Code*

The above documents followed by an asterisk (*) can be viewed at
http://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements

2. Supplies. Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall
provide to CITY the supplies, and ancillary services (if any), described in Exhibit A. CONTRACTOR
shall provide said supplies and services at the time, place, and in the manner specified in Exhibit
A. CONTRACTOR shall not be compensated for supplies/services provided outside the scope of
Exhibit A unless prior to providing such supplies/services: (a) CONTRACTOR notifies CITY and CITY
agrees that such supplies/services are outside the scope of Exhibit A; (b) CONTRACTOR estimates
the additional compensation required for these additional supplies/services; and (c) CITY, after
notice, approves in writing a contract supplement specifying the additional supplies/services and
amount of compensation therefor. CITY shall have no obligations whatsoever under this
Agreement and/or any contract supplement, unless and until this Agreement or any contract
supplement 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.

3. Payment. CITY shall pay CONTRACTOR for supplies and ancillary services provided 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 supplies/services
provided pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional supplies or ancillary services. CONTRACTOR shall submit all billings for said supplies/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.

4. **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 furnishing supplies and ancillary 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.

5. **General Provisions.** The General Provisions set forth in Exhibit D, that 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 said terms or conditions.

6. **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://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements](http://portal.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.

7. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.

8. **Exhibits.** All exhibits referred to herein are attached hereto and 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: William O. Busath

Title: Director
For: Howard Chan, City Manager

ATTEST:

_____________________________
City Clerk

APPROVED TO AS FORM:

_____________________________
City Attorney
CONTRACTOR:

____________________________________
NAME OF FIRM

____________________________________
Federal I.D. No

____________________________________
State I.D. No.

____________________________________

TYPE OF BUSINESS ENTITY (check one):

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

____________________________________
Signature of Authorized Person

____________________________________
Print Name and Title

____________________________________
Additional Signature (if required)

____________________________________
Print Name and Title

Attachments

Exhibit A - Scope of Service
Exhibit B - Fee Schedule/Manner of Payment
Exhibit C - Facilities/Equipment Provided
Exhibit D - General Provisions
EXHIBIT A

SUPPLIES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Mark Severeid
7501 College Town
Sacramento, CA 95826
Phone: (916) 808-8667/E-mail: msevereid@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:

Alexander James
Thermo Electron North America LLC
5225 Verona Road
Madison, WI 53711
Phone: (916) 753-4844/E-mail: alexander.james@thermofisher.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 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. Scope of Services.

The supplies and ancillary services (if any) provided shall be as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.

3. Time of Performance. The supplies described herein shall be provided upon order after contract execution.
EXHIBIT B

SUPPLIES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR’s Compensation.** The total of all fees paid to the CONTRACTOR for the supplies and performance of all ancillary services set forth in Exhibit A (hereafter the “Supplies”), shall not exceed the total sum of $107,030.73.

2. **Billable Rates.** CONTRACTOR shall be paid for the Supplies in accordance with Attachment 1 to Exhibit B, attached hereto and incorporated herein.

3. **Payments to CONTRACTOR.**

   A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR’s invoice, said payments to be made in proportion to supplies provided and services performed. 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. 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 below.

   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

4. **Additional Supplies.** Additional Supplies are those supplies/services related to the scope of Supplies of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Supplies shall be provided only when a contract supplement authorizing such Additional Supplies is approved by CITY in accordance with CITY’s approval procedures.

5. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Supplies and Additional Supplies 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 Supplies and Additional Supplies provided under this Agreement, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.

6. **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 such 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 6.
Attachment 1 to Exhibit B

Sales Quotation

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<td>Origin - Prepay And Add</td>
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Company Name | Customer Name
--------------|----------------|
City of Sacramento | Lin Zhang

Thermo Electron North America LLC
5225 Verona Road
Madison WI 53711

1400 Northpoint Parkway
West Palm Beach FL 33407

Pricing is contingent on trade-in of Varian GCMS system Serial Number 6278101998 And Tekmar 3000.
Proposal includes 2 years of warranty and 1 preventive maintenance on the IsoQ7000 GCMS and Tekmar Lumin P&T

Customer Info:
Customer Name: Lin Zhang
Company Name: City of Sacramento
Address: Drinking Water Treatment Plant
7501 College Town
Sacramento California 95825
United States
Phone: (916) 838-3737
Email: lizhang@cityofsacramento.org

Sales Contact Info:
Contact Name: Alexander James
Phone: +1 (916) 753-4844
Email: alexander.james@thermo.com

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The Thermo Scientific™ ISO™ 7000 GC-MS system is a GC single quadrupole platform capable of boosting laboratory efficiency and productivity through increased robustness combined with superior sensitivity to fulfill your most challenging analytical needs. Developed to enhance the user experience in routine workflows, the ISO 7000 GC-MS system is streamlined to ensure great data consistency over time while offering new automated instrument control tools for an unprecedented ease-of-use and a quick learning process, as required in a high-throughput laboratory. Thermo Scientific™ SmartTune is the new simplified tuning tool designed to remove tuning complexity and intelligently eliminate unnecessary steps in the process for faster operations and consistency in performances over time. Electron Ionization (EI) source, with Full Scan (FS), SIM, and FS/SIM simultaneous within sample injection. Timed Acquisition (t-SIM) mode and AutoSIM are included as standard to facilitate the method development, acting as a real time saver and productivity booster. AutoSIM allows users to automate the selection of SIM ions from full-scan data in a guided and automated fashion. t-SIM is complementary to AutoSIM optimizing the dwell time in SIM quantitation methods in case of large number of analytes and co-elution, assuring the maximum sensitivity. Also includes AutoSRM, which is your very own mass spectrometer method development expert integrated into your system. The wireless designed Thermo Scientific™ ExtractaBrite™ EI source is comprised of highly inert material for high sample path integrity. The source cartridge includes the

A part of: Thermo Fisher Scientific

Form Approved by City Attorney 4-23-18
Sales Quotation

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----------|---------------|---------------|-----------------|
5-6 weeks | NET 30 DAYS UPON INVOICE DATE | Origin - Prepay And Add | June 27, 2019 |

Company Name | Customer Name
--------------|--------------|
City of Sacramento | Lin Zhang

* See end pages of quote for PO Submission details

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A part of: ThermoFisher SCIENTIFIC

Thermo Electron North America LLC
5225 Verona Road
Madison WI 53711

1400 Northpoint Parkway
West Palm Beach FL 33407

Form Approved by City Attorney 4-23-18
# Sales Quotation

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A part of: [ThermoFisher Scientific](https://www.thermofisher.com)
# Sales Quotation

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**ISQ7K-NOVPI Subtotal:** $125,706.80  
**ISQ7K-NOVPI Discount:** - $30,106.46  
**ISQ7K-NOVPI Total:** $95,600.36

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<td>EX WAR PLAN - TEKMAR P &amp; T</td>
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<td>EX WAR Plan - Tekmar P&lt;(&amp;&lt;)&gt;T</td>
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**Additional Items Subtotal** $3,147.00  
**Additional Items Discount** - $314.70  
**Additional Items Total** $2,832.30

**Quote Subtotal:** $128,853.80  
**Promotions / Discounts:** - $30,420.16  
**Quote total less discounts:** $98,433.66

**Shipping:** $650.00  
**Tax:** $7,947.08
Sales Quotation

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<th>Lead Time</th>
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<th>Expiration Date</th>
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<tr>
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<td>NET 30 DAYS UPON INVOICE DATE</td>
<td>Origin - Prepay And Add</td>
<td>June 27, 2019</td>
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Company Name: City of Sacramento
Customer Name: Lin Zhang

Quotation Totals: $107,030.73

Taxes are estimated and are to be confirmed upon or at the time of purchase.

Competitive monthly payment options are available. For more information, please contact financialservices@thermofisher.com or call (800) 986-9731 ext. 7.
EXHIBIT C

SUPPLIES 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]:

Access to E.A. Fairbairn Water Treatment Plant
EXHIBIT D
SUPPLIES 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 Supplies 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 provision of any Supplies under this Agreement. (As used in this Exhibit D, the term “Supplies” shall include both Supplies and Additional Supplies 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 supplies/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 supplies/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 provision of Supplies 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 provision of Supplies 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. CONSTRUCTION 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 supplies provided or 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 provide all Supplies 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 provide Supplies pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR’s staff assigned to provide the Supplies required under this Agreement, prior to any such performance.

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 providing Supplies 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 Supplies provided 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 provided all Supplies 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 supplies provided and 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 actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs 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 “Liabilities”), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance or failure to perform this Agreement by CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.

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 supplies/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) 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)

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) 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 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 Supplies or Additional Supplies 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. The above provision shall apply in all instances unless prohibited by the funding source for the Agreement.
PROJECT #:  
P类似的文档内容
DEPARTMENT: Utilities  
DIVISION: Water Operations & Maintenance

CITY OF SACRAMENTO  
SUPPLIES AGREEMENT

THIS AGREEMENT is made at Sacramento, California, as of May 7, 2019, by and between the CITY OF SACRAMENTO, a municipal corporation ("CITY"), and

Agilent Technologies, Inc.  
2850 Centerville Road  
Wilmington, DE 19808-1610  
Phone: (800) 227-9770/E-mail: LCSAinstrumentssales@agilent.com

("CONTRACTOR"), who agree as follows:

1. **Contract.** The Contract shall consist of this Agreement and each of the following documents (if applicable), which are incorporated herein by reference:

   Contractor's Bid Proposal Form  
   Technical Specifications  
   Local Business Enterprise (LBE) Requirements*  
   Requirements of the Non-Discrimination in Employee Benefits Code*

   The above documents followed by an asterisk (*) can be viewed at [http://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements](http://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements)

2. **Supplies.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the supplies, and ancillary services (if any), described in Exhibit A. CONTRACTOR shall provide said supplies and services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for supplies/services provided outside the scope of Exhibit A unless prior to providing such supplies/services: (a) CONTRACTOR notifies CITY and CITY agrees that such supplies/services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional supplies/services; and (c) CITY, after notice, approves in writing a contract supplement specifying the additional supplies/services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any contract supplement, unless and until this Agreement or any contract supplement 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.

3. **Payment.** CITY shall pay CONTRACTOR for supplies and ancillary services provided 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 supplies/services...
provided pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional supplies or ancillary services. CONTRACTOR shall submit all billings for said supplies/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.

4. **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 furnishing supplies and ancillary 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.

5. **General Provisions.** The General Provisions set forth in Exhibit D, that 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 said terms or conditions.

6. **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://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements](http://portal.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.

7. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.

8. **Exhibits.** All exhibits referred to herein are attached hereto and 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: William O. Busath  

Title: Director  
For: Howard Chan, City Manager  

ATTEST:  

______________________________  
City Clerk  

APPROVED TO AS FORM:  

______________________________  
City Attorney
CONTRACTOR:

Agilent Technologies, Inc.

NAME OF FIRM

77-0518772

Federal I.D. No

State I.D. No.


TYPE OF BUSINESS ENTITY (check one):

_____ Individual/Sole Proprietor

_____ Partnership

X Corporation (may require 2 signatures)

_____ Limited Liability Company

_____ Other (please specify: ______________________)

Signature of Authorized Person

Grace Clampitt, Government Contracts Specialist

Print Name and Title

[Signature]

Additional Signature (if required)

Michelle Katz, Americas Contract Admin Mgr.

Print Name and Title

Attachments

Exhibit A - Scope of Service
Exhibit B - Fee Schedule/Manner of Payment
Exhibit C - Facilities/Equipment Provided
Exhibit D - General Provisions
EXHIBIT A
SUPPLIES AGREEMENT
SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Mark Severeid
7501 College Town
Sacramento, CA 95826
Phone: (916) 808-8667/E-mail: msevereid@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:

Margaret Roderick
Agilent Technologies, Inc.
2850 Centerville Road
Wilmington, DE 19808-1610
Phone: (800) 227-9770/E-mail: LCSAnimalCustodial@agilent.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 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. Scope of Services.

The supplies and ancillary services (if any) provided shall be as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.

3. Time of Performance. The supplies described herein shall be provided upon order after contract execution.
EXHIBIT B

SUPPLIES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the supplies and performance of all ancillary services set forth in Exhibit A (hereafter the "Supplies"), shall not exceed the total sum of **$165,199.59**.

2. **Billable Rates.** CONTRACTOR shall be paid for the Supplies in accordance with Attachment 1 to Exhibit B, attached hereto and incorporated herein.

3. **Payments to CONTRACTOR.**
   
   A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to supplies provided and services performed. 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. 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 below.

   D. **Submitting Invoices:**

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

      [apinvoices@cityofsacramento.org](mailto: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

4. Additional Supplies. Additional Supplies are those supplies/services related to the scope of Supplies of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Supplies shall be provided only when a contract supplement authorizing such Additional Supplies is approved by CITY in accordance with CITY's approval procedures.

5. Accounting Records of CONTRACTOR. During performance of this Agreement and for a period of three (3) years after completing all Supplies and Additional Supplies 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 Supplies and Additional Supplies provided under this Agreement, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection by representatives of the CITY upon reasonable written notice.

6. 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 such 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 6.
Attachment 1 to Exhibit B

Quotation

<table>
<thead>
<tr>
<th>Quote No.</th>
<th>Create Date</th>
<th>Delivery Time</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2808652</td>
<td>03/11/2019</td>
<td>2 Weeks</td>
<td>1 of 7</td>
</tr>
</tbody>
</table>

Contact: Margaret Barko  
Phone: 415-800-7021  
Valid to: 05/10/2019

To place an order, call 1-800-227-3970 Option 1  
For Instruments Fax: 302-633-8953  
Email: LSCInstrumentsales@agilent.com  
For Consumables Fax: 302-633-8901  
Email: CAG_sales-NA@agilent.com  
For Genomics Fax: 512-321-3128  
Email: orders@agilent.com  
For additional instructions, see last page

<table>
<thead>
<tr>
<th>Product/Description</th>
<th>Qty/Unit</th>
<th>List Price</th>
<th>Discount Amount</th>
<th>Extended Net Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>G8421A</td>
<td>1.000 EA</td>
<td>183,653.00 USD</td>
<td>55,755.38</td>
<td>116,897.62</td>
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</table>

Agilent 7800 ICP-MS mainframe with He cell gas line

With the following configuration:
Ship-to Country: USA
Advanced Acquisition
Installation (44K)
Familiarization of Installation (44L)

Special discount of 30.00% is applied.

<table>
<thead>
<tr>
<th>Product/Description</th>
<th>Qty/Unit</th>
<th>List Price</th>
<th>Discount Amount</th>
<th>Extended Net Price</th>
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</thead>
<tbody>
<tr>
<td>G7215C</td>
<td>1.000 EA</td>
<td>14,478.00 USD</td>
<td>5,212.68</td>
<td>9,265.32</td>
</tr>
</tbody>
</table>

ICP-MS Workstation PC bundle. Includes PC, Windows OS, Monitor and Printer. Also includes ICP-MS MassHunter license if either of option #003, #004 or #005 is selected.

With the following configuration:
Ship-to Country: USA
MassHunter Software For 7800 ICP-MS
Installation (44K)
1 Year SW Update/Phone Assist (44W)

Special discount of 30.00% is applied.

<table>
<thead>
<tr>
<th>Product/Description</th>
<th>Qty/Unit</th>
<th>List Price</th>
<th>Discount Amount</th>
<th>Extended Net Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>G7206C</td>
<td>1.000 EA</td>
<td>3,212.00 USD</td>
<td>1,158.32</td>
<td>2,053.68</td>
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ICP-MS MassHunter Intelligent Sequence
Quotation

<table>
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<tbody>
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<td>2808552</td>
<td>03/1/2019</td>
<td>2 Weeks</td>
<td>2 of 7</td>
</tr>
</tbody>
</table>

Contact: Margaret Roderick  
Phone: 415-990-7621  
Valid to: 05/10/2019

To place an order: Call 1-800-277-5770 Option 1
For Instruments Fax: 302-653-8903
Email: LSCAInstrumentsales@agilent.com
For Consumables Fax: 302-653-8901
Email: CAG_sales-NA@agilent.com
For Genomics Fax: 512-321-3128
Email: orders@agilent.com
For additional instructions, see last page

<table>
<thead>
<tr>
<th>Product/Description</th>
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<th>Unit List Price</th>
<th>Discount Amount</th>
<th>Extended Net Price</th>
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</thead>
<tbody>
<tr>
<td>Software option:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provides comprehensive real-time QC, action on failure and reporting functions for compliance with US EPA and similar requirements for 7700, 7900, 7900E, 8800 and 8900.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>With the following configuration:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ship-to Country: USA</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Installation (444K)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Familiarization at installation (444L)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Special discount of 36.00% is applied.</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>G3292A</td>
<td>1.000 EA</td>
<td>5,744.00 USD</td>
<td>2,026.11</td>
<td>3,717.89</td>
</tr>
<tr>
<td>Poly/Science Model 6106T Recirculating Chillers.</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>With the following configuration:</td>
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<tr>
<td>Ship-to Country: USA</td>
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<tr>
<td>Special discount of 35.26% is applied.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Price was adjusted by 5.00%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5105.5950</td>
<td>1.000 EA</td>
<td>625.00 USD</td>
<td>216.75</td>
<td>406.25</td>
</tr>
<tr>
<td>ICP-MS Checkout Solutions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Installation checkout solutions kit required by the Agilent installation engineer to validate the Agilent 7700 performance on site.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contains tuning solution, dual mode (1), dual mode (2), wash and water blank solutions</td>
<td></td>
<td></td>
<td></td>
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# Quotation

<table>
<thead>
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<td>2608652</td>
<td>03/11/2019</td>
<td>2 Weeks</td>
<td>3 of 7</td>
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<table>
<thead>
<tr>
<th>Contact</th>
<th>Phone #</th>
<th>Valid to</th>
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</thead>
<tbody>
<tr>
<td>Margaret Rodrick</td>
<td>415-990-7021</td>
<td>05/10/2019</td>
</tr>
</tbody>
</table>

To place an order: Call 1-800-227-9770 Option 1
For Instruments Fax: 302-633-9953
Email: LSCInstrumentsSales@agilent.com
For Consumables Fax: 302-633-9001
Email: CAG_sales-NA@agilent.com
For Genomics Fax: 512-321-3128
Email: orders@agilent.com
For additional instructions; see last page

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<th>Extended Net Price</th>
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<tbody>
<tr>
<td>Special discount of 35.00 % is applied.</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>5198-6524</td>
<td>1.000</td>
<td>825.00 USD</td>
<td>287.00</td>
<td>533.00</td>
</tr>
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</table>

- PA tuning solution set.
- 2 bottles of 100mL, 20ppm each of zn, be, CD, As, 10PPM of Ni, Ba, Mg, 5ppm of Ti, NA, K, U, Ca, Th, Ba, Co, Sr, V, Cr, Mn, Li, Be, In, Be, Bi
- 2.5ppm of Y, Yb, La, 2.5% HNO3

- Special discount of 35.00 % is applied.
- G8415A
- 1.000 EA
- 12,754.19 USD
- 4,463.97
- 8,290.22

- SPS 4 autosampler for ICP-MS products.
- Optional cover kit not included.

- With the following configuration:
  - Integrated Cover Kit (002): Selected
  - Pumped Drain Kit (007): Selected
  - Ship to Country: USA
  - SPS 4 Integrated cover kit
  - Installation (44K)
  - Facilitiation at Installation (44L)

- Special discount of 35.00 % is applied.
- RMSH.2
- 1.000 EA
- 366.00 USD
- 126.00
- 234.00
# Quotation

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To place an order: Call 1-800-227-9770 Option 1
For Instruments Fax: 302-633-9853
Email: LSCInstrumentssales@agilent.com
For Consumables Fax: 302-633-9901
Email: CAG_sales-NA@agilent.com
For Genomics Fax: 512-321-3129
Email: orders@agilent.com
For additional instructions, see last page

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</thead>
<tbody>
<tr>
<td>5089-8751</td>
<td>1.000 PK</td>
<td>342.00 USD</td>
<td>119.70-</td>
<td>222.30</td>
</tr>
<tr>
<td>Fittings 1/8&quot; stainless steel 20/PK 1/8&quot; stainless steel Nut, front and back ferrules</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Special discount of 35.00 % is applied.</td>
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</tr>
<tr>
<td>7157-9210</td>
<td>1.000 EA</td>
<td>135.00 USD</td>
<td>47.25-</td>
<td>87.75</td>
</tr>
<tr>
<td>Stainless Steel Tubing, 1/8 in, 20ft</td>
<td></td>
<td></td>
<td>Special discount of 35.00 % is applied.</td>
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<tr>
<td>0101-1536</td>
<td>1.000 EA</td>
<td>363.00 USD</td>
<td>134.05-</td>
<td>248.95</td>
</tr>
<tr>
<td>Gas regulator, Hölzel for ICP-MS. 2 stage, brass body, stainless steel diaphragm, C9A6800 inlet, 3000 psi, 16psi outlet, 30psi gauge + 1/8&quot; Swagelok</td>
<td></td>
<td></td>
<td>Special discount of 35.00 % is applied.</td>
<td></td>
</tr>
<tr>
<td>H2414A</td>
<td>1.000 EA</td>
<td>19.176.00 USD</td>
<td>2.544.00-</td>
<td>7,632.00</td>
</tr>
</tbody>
</table>

Form Approved by City Attorney 4-23-18

Page 6

Page 39 of 53
Agilent Technologies

Derek Chen
Water Quality Chemist
Department of Utilities
City of Sacramento
7501 College Town Dr
Sacramento CA 95826-2359

Quotation

<table>
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<td>03/11/2019</td>
<td>2 Weeks</td>
<td>5 of 7</td>
</tr>
</tbody>
</table>

Contact

Margaret Roderick | 415-990-7621 | 05/10/2019 |

To place an order, Call 1-800-227-4770 Option 1
For Instruments Fax : 302-633-6853
Email : LSCInstrumentsales@agilent.com
For Consumables Fax : 302-633-6901
Email : CAG_sales-NA@agilent.com
For Genomics Fax : 512-321-3128
Email : orders@agilent.com
For additional instructions, see last page

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<th>Unit List Price</th>
<th>Discount Amount</th>
<th>Extended Net Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Method and Application Consulting</td>
<td>1.000 EA</td>
<td>4,885.00 USD</td>
<td></td>
<td>4,885.00</td>
</tr>
<tr>
<td>Onsite consulting for a maximum of 4 participants. Certificates and manuals not included.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>With the following configuration:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ship-to Country : USA</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Three Day On-site (Includes Travel)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special discount of 25.00% is applied.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SYS-IM-7000</td>
<td>1.000 EA</td>
<td>4,885.00 USD</td>
<td></td>
<td>4,885.00</td>
</tr>
</tbody>
</table>

ICRMAIS 7800 System

With the following configuration:
Ship-to Country : USA

CrossLab Prev Maintenance - for total

| Gross Amount : $ | 225,578.19 |
| Total Discount : $ | 82,090.31 |
| Net Amount : $   | 154,487.88 |
| Sales Tax : $    | 11,711.71  |
| Total : $        | 166,199.59 |

Form Approved by City Attorney 4-23-18

Page: 7
# Agilent Technologies

Derek Chan  
Water Quality Chemist  
Department of Utilities  
City of Sacramento  
7501 College Town Dr  
SACRAMENTO CA 95826-2359

## Quotation

<table>
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To place an order: Call 1-800-227-9770 Option 1  
For Instruments Fax: 302-633-5853  
Email: LSCInstrumentsSales@agilent.com  
For Consumables Fax: 302-633-8901  
Email: CAG_sales-NA@agilent.com  
For Genomics Fax: 512-321-3128  
Email: orders@agilent.com  
For additional instructions, see last page.

---

**TO PLACE AN ORDER, Agilent offers several options:**
1. Visit [http://www.agilent.com/chem/supplies](http://www.agilent.com/chem/supplies) to place online orders using a purchase order or credit card.
2. Call 1-800-227-9770 (option 1) any weekday between 8 am and 8 pm Eastern time in the U.S., Canada & Puerto Rico.
3. To place an order for Consumables, please fax the order to 302-633-8901.
   - To place an instrument and/or software order, please fax the order to 302-633-5853.
   - To place an order for Genomics, please fax the order to 512-321-3128, or email to orders@agilent.com.
4. Or you can mail your order to:  
   Agilent Technologies  
   North American Customer Contact Center  
   2850 Centerville Road Suite 2  
   Wilmington, DE 19808-1810

**To place an order, the following information is required:**  
- Purchase order number or credit card, delivery date, ship to, invoice to, end use, and quote number.
- AGA customers please provide AGA contract.

**EXCLUSIVE OFFERS FOR NEW INSTRUMENT CUSTOMERS:** go to [www.agilent.com/chem/exclusiveoffers](http://www.agilent.com/chem/exclusiveoffers)

**TO CHECK THE STATUS OF AN ORDER:**
2. Call 1-800-227-9770 (option 1) any weekday between 8 am and 8 pm Eastern time, in the U.S., Canada & Puerto Rico. You will need to know the purchase order or credit card number the order was placed on.

**FINANCING AND LEASING:** A wide range of options are available, for more information or to discuss how monthly payments could suit your operational or budgetary requirements, contact your Agilent Account Manager.

**TERMS AND CONDITIONS:**
- **Pricing:** Web prices are provided only for the U.S. in U.S. dollars. All prices are in local currency and for end use. Applicable local taxes are applied.
- **Sales Tax:** is subject to change at the time of order.
- **Shipping and Handling Charges:** Orders with a value less than $4000 or those requiring special services, such as overnight delivery, may be subject to additional shipping & handling fees. Some of these charges may be avoided by ordering via the Web.
- **Payment Terms:** Net 30 days from invoice date, subject to credit approval.

* Quotation Validity: This quotation is valid for 60 days unless otherwise indicated.
* Warranty period for instrumentation is 1 year. The Warranty period for columns and consumables is 90 days.

Visit [www.agilent.com/chem](http://www.agilent.com/chem)
- For Training course information and registration including e-Seminars, select Education.
- For Literature, Application notes, and other information, select Library.
- For Online Technical Support, including the Technical Support Assistant and Frequently Asked Questions, select Technical Support.

It is Agilent Technologies intent to ship product at the earliest available date unless specified otherwise.
Quotation

<table>
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<td>03/11/2019</td>
<td>2 Weeks</td>
<td>7</td>
</tr>
</tbody>
</table>

Contact | Phone no. | Valid to
Margaret Rodemack | 415-980-7021 | 05/10/2019

To place an order: Call 1-800-227-9770 Option 1
For Instruments Fax: 302-633-8953
Email: LSCAinstrumentsales@agilent.com
For Consumables Fax: 302-633-8901
Email: CAG_sales-NA@agilent.com
For Genomics Fax: 512-321-3128
Email: orders@agilent.com
For additional instructions, see last page

The sale of Agilent Products and Services referenced in this quotation is subject to the terms and conditions of Agilent's Terms of Sale, any applicable Terms of Use, and any applicable terms referenced herein. The sale of Agilent Products, services, and solutions is subject to Agilent's Terms of Sale and any applicable terms referenced herein. All of the above Terms are applicable in each of the states in which the equipment or equipment components provided by us are manufactured. If you have any questions or comments about these terms, please contact us at 1-800-227-9770. Any accompanying documentation will be subject to the terms and conditions of use as specified in the documentation.

WARNING: This product contains a chemical known to the State of California to cause cancer or birth defects or other reproductive harm.
EXHIBIT C

SUPPLIES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

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

XXXXXX furnish the following facilities or equipment for the Agreement [list, if applicable]:

Access to E.A. Fairbairn Water Treatment Plant
EXHIBIT D
SUPPLIES 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 Supplies 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 provision of any Supplies under this Agreement. (As used in this Exhibit D, the term "Supplies" shall include both Supplies and Additional Supplies 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 supplies/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 supplies/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 provision of Supplies 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 provision of Supplies 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 or developed 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 supplies provided or 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 provide all Supplies 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 provide Supplies pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR’s staff assigned to provide the Supplies required under this Agreement, prior to any such performance.

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 providing Supplies 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 Supplies provided 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 provided all Supplies 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 supplies provided and 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 actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs 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 “Liabilities”), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.

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 supplies/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. **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)

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) 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 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 Supplies or Additional Supplies 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. The above provision shall apply in all instances unless prohibited by the funding source for the Agreement.