Title: Agreement: Risk and Resilience Assessment and Emergency Response Plan with Jacobs Engineering Group, Inc.

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager or the City Manager’s designee to execute a Professional Services Agreement with Jacobs Engineering Group, Inc. to complete a Risk and Resilience Assessment (RRA) and Emergency Response Plan (ERP) to satisfy the American Water Infrastructure Act 2018 (AWIA) requirement, for an amount not-to-exceed $165,506.

Contact: Lisa Deklinski, Project Manager, (916) 808-1309; Stacy Larkin, Program Analyst, (916) 808-6356; William Busath, Director of Utilities (916) 808-1434; Department of Utilities

Presenter: None

Attachments:
1-Description/Analysis
2-Agreement
Description/Analysis

Issue Detail: Staff recommends Council approve an agreement with Jacobs Engineering Group, Inc. for completion of a RRA and ERP to satisfy the AWIA requirement.

In 2018, Congress signed into law the AWIA (S.3021, Law 115-270), which requires the City to conduct a RRA of its water system and develop a corresponding ERP. Upon completion of the RRA and ERP, the City must submit a certification to the Environmental Protection Agency (USEPA) showing compliance with the federal mandate. The RRA is due to the USEPA in March of 2020 and the ERP must be completed by the end of September 2020. The City may be fined $25,000 per day every day that the documents are late.

Policy Considerations: City Council approval is required for professional service agreements of $100,000 or more per City Code 3.64.020.

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 organizational or administrative activity of governments that will not result in direct or indirect physical changes in the environment and is not subject to CEQA. CEQA Guidelines Section 15060(c)(3).

Sustainability: The proposed project is consistent with the 2035 General Plan because it improves infrastructure reliability, by conducting the required risk assessments of the drinking water system to assure the quality and meet recently established federal mandates. The assessment will help to build secure and resilient utilities against physical, cyber, and natural and man-made threats and to be able to respond effectively if such disasters occurred.

Commission/Committee Action: Not Applicable

Rationale for Recommendation: Staff has reached out to three firms that have worked with Utilities in the past and recommends executing a 2-year agreement with Jacobs Engineering Group, Inc. (Jacobs) for the following reasons:

1. The certification is due to the USEPA by March 2020 which means using the City’s standard competitive bid process would shorten the project timeline considerably and therefore put the project at a disadvantage.
2. The City provided an opportunity to multiple providers to submit qualifications and proposals and the City made its decision based on the demonstrated competence and professional qualifications necessary to perform the services.

3. Jacobs is familiar with the Department of Utilities’ (DOU) systems and has previously completed a similar project in 2013 so the increased familiarity with DOU’s systems would result in increased efficiency and lower costs.

4. Jacobs has proposed a team that has worked with the DOU team assigned to this project and that will reduce project time.

5. Jacobs has been closely tracking the implementation of the AWIA and understands the intent and extent of the project. Jacobs has extensive experience working with the USEPA and other agencies on these types of project and is therefore considered an industry expert.

6. This is a federal requirement for all drinking water systems and there are only a small number of firms capable of doing this project. The longer the City takes to obtain a consultant, the more the City is put at risk of settling for a firm that may not be as familiar or capable of providing the service, which may create a higher risk of receiving a penalty of up to $25,000 per day if the certification letter is not submitted by the deadline.

**Financial Considerations:** The proposed agreement is for an amount not-to-exceed $165,506 with a two-year term. There are sufficient funds available in the proposed Fiscal Year 2019/20 Department of Utilities operating budget, to fund the first year of this agreement, in the amount of $140,000. Funding of this agreement in future fiscal years will be subject to availability of sufficient funds in the budget adopted for the applicable fiscal year.

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

**Local Business Enterprise (LBE):** Jacobs Engineering Group, Inc. is an LBE.
THIS AGREEMENT is made at Sacramento, California, as of ____________, by and between the CITY OF SACRAMENTO, a municipal corporation ("CITY"), and

Jacobs Engineering Group, Inc.
150 Spear Street, Suite 750, San Francisco, CA 941056
Phone: (415) 728-0658/Fax: (415) 728-0651/E-mail: todd.anderson@jacobs.com

(“CONTRACTOR”), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide the services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of the services: (a) CONTRACTOR notifies CITY and CITY agrees that the services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager’s authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.

2. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.

3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for CONTRACTOR to perform services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
4. **General Provisions.** The General Provisions set forth in Exhibit D, which include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over those terms or conditions.

5. **Non-Discrimination in Employee Benefits.** This Agreement may be subject to the requirements of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. A summary of the requirements of Sacramento City Code Chapter 3.54, entitled “Requirements of the Non-Discrimination in Employee Benefits Code,” can be viewed at: [http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements](http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements). By signing this Agreement, CONTRACTOR acknowledges and represents that CONTRACTOR has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.54. If requested by CITY, CONTRACTOR agrees to promptly provide such documents and information as may be required by CITY to verify CONTRACTOR’s compliance. Any violation by CONTRACTOR of Sacramento City Code Chapter 3.54 constitutes a material breach of this Agreement, for which the CITY may terminate the Agreement and pursue all available legal and equitable remedies.

6. **Considering Criminal Conviction Information in the Employment Application Process.** This Agreement may be subject to the requirements of Sacramento City Code Chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process. A summary of the requirements of Sacramento City Code Chapter 3.62, entitled “Ban-The-Box Requirements,” can be viewed at: [http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements](http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements). By signing this Agreement, CONTRACTOR acknowledges and represents that CONTRACTOR has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62. If requested by CITY, CONTRACTOR agrees to promptly provide such documents and information as may be required by CITY to verify CONTRACTOR’s compliance. Any violation by CONTRACTOR of Sacramento City Code Chapter 3.62 constitutes a material breach of this Agreement, for which the CITY may terminate the Agreement and pursue all available legal and equitable remedies. CONTRACTOR agrees to require its subcontractors to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62, and include these requirements in all subcontracts covered by Sacramento City Code Chapter 3.62.

7. **Additional Requirements for Surveying, Material Testing, and Inspection Services.** If this Agreement includes any land surveying, material testing, or inspection services provided for a City construction project, during the design, pre-construction, construction, or post-construction phases of the project, the Contractor and any subcontractor or subconsultant performing any such services shall comply with the provisions specified in Exhibit E.

8. **Authority.** The person signing this Agreement for CONTRACTOR represents and warrants that he or she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
9. **Exhibits.** All exhibits referred to herein and attached hereto, and the “Requirements of the Non-Discrimination in Employee Benefits Code” and “Ban-The-Box Requirements” described above, are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**
A Municipal Corporation

By: ______________________________

Print name: William O. Busath

Title: Director

For: Howard Chan, City Manager

APPROVED AS TO FORM:

_____________________________
City Attorney

ATTEST:

_____________________________
City Clerk

**Attachments**

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

______________________________________________________________
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
EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Lisa Deklinski, Program Specialist
1395 35th Avenue, Sacramento, CA 95822
Phone: (916) 808-1309/E-mail: ideklinski@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:

Todd Anderson, P.E., Senior Consultant
Jacobs Engineering Group, Inc.
150 Spear Street, Suite 750, San Francisco, CA 941056
Phone: (415) 728-0658/Fax: (415) 728-0651/E-mail: todd.anderson@jacobs.com

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

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

3. Conflict of Interest Requirements.

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

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

(1) An “assuming office” statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;
(2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and

(3) A “leaving office” statement of economic interests to be filed within 30 days of completion of the contract.

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

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

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

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

(1) Identify the individuals who will provide services or perform work under this Agreement as “consultants”;

(2) Cause these individuals to file with the CITY Representative the “assuming office” statements of economic interests required by the CITY’s Conflict of Interest Code.

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

4. **Scope of Services.**

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

5. **Time of Performance.** The services described herein shall be provided during the period of July 1, 2019 through and including June 30, 2021.
City of Sacramento Department of Utilities
Water System Risk and Resilience Assessment and Emergency Response Plan Development
Scope of Services

This scope outlines the preparation of two documents for the City of Sacramento Department of Utilities’ (hereinafter “DOU”) water system: a Risk and Resilience Assessment (RRA) and an Emergency Response Plan (ERP). These two documents are central to complying with the requirements of the America’s Water Infrastructure Act 2018 §2013 (AWIA). Jacobs will provide DOU with a completed RRA and ERP as described in this scope for DOU to submit certification letters in accordance with the AWIA requirements for large (>100,000 served) water utilities.

Common to all the tasks below is that Jacobs will continuously check in with the USEPA for any AWIA requirement changes and/or updates, and shall communicate updated information to DOU’s project manager and subsequently utilize the information within the RRA and ERP development and documents.

**TASK 1 — Project Management**

Jacobs will prepare a detailed work plan and schedule to form the basis for project delivery for DOU. The work plan and schedule will be updated as needed to reflect changes. Project management will be conducted for the tasks included in this project plan, and will include coordination with DOU staff, project biweekly progress meetings, schedule management, monthly progress reports, and team coordination. The main focus of this project management task will be to ensure that our team adheres to its scope, schedule, budget, and work product quality obligations to DOU.

Upon Notice to Proceed (NTP), the Jacobs team will plan and schedule a kickoff meeting to initiate the project team, review the scope of services, initiate planning for on-site activities, and confirm expectations for the project. The team will conduct a two-hour kickoff meeting with DOU stakeholders. At the kickoff meeting, the team will establish secure methods of transmitting electronic and paper documents (e.g., SharePoint site), and discuss how to protect this work from any public record act information requests (PRAs). Deliverables will be classified as PCI (Protected Critical Information). Participants will also discuss DOU’s previous Vulnerability Assessment (VA) and other documents pertinent to the project.

**Deliverables:**

- **Work Plan and Schedule** – Jacobs will prepare and submit a draft and final work plan and schedule based on this scope of services.
- **Monthly Progress Reports** – Jacobs will prepare monthly progress reports associated with activities conducted and invoiced, in the format similar to previous DOU projects or as otherwise required by DOU.
- **Kickoff Meeting Summary** – Jacobs will submit a summary of the kickoff meeting to DOU’s project manager within 3 business days of the meeting.

**TASK 2 — Document Review and AWIA Requirements Gap Analysis**

Jacobs will review DOU’s 2014 VA against the requirements set forth in Section 2013 of the recent AWIA. In particular, the team will look for gaps between the 2014 VA and the areas expanded under the AWIA (e.g., source water, chemical handling, financial systems). In addition, the Jacobs team will catalogue significant new or upgraded water system infrastructure, assets, and systems implemented after the 2014 VA for assessment of their asset criticality and infrastructure resilience in Task 3.

DOU does not currently have a formal ERP; however, they do have in place a department-wide Emergency Operations Plan (EOP). Jacobs plans to use this EOP as a starting point for the development of the water system ERP. The team will review the existing EOP against AWIA ERP requirements to...
document the compliance gaps, if any, with the understanding that the ERP will also need to reflect the results of the RRA (described below). In addition, Jacobs will perform a high-level review of individual DOU emergency operations procedures that pertain to the water system for potential modification and inclusion into the final water system ERP. This scope assumes that DOU will provide Jacobs with a copy of its existing EOP electronically, along with copies of its individual procedures, electronically to the extent possible.

Upon completion of the document review and gap analysis, the team will conduct a workshop with the DOU project team to review the results and discuss the strategy to complete an AWIA-compliant water system RRA and ERP. Jacobs will also facilitate a discussion to confirm any significant additions to the water system, and their criticality, since the issuance of the 2014 VA. Finally, the team will review and, if necessary, gather additional information for the threat characterization as compared to the 2014 VA considering the expanded AWIA categories. A summary memo will be prepared and include further definition of the scope and level of effort required to develop an RRA and ERP, if needed, based on the gap analysis findings.

Deliverables:

Workshop Summary – Jacobs will submit a summary of the Gap Analysis Workshop to the DOU project manager within 3 business days.

Gap Analysis Summary Memo – Jacobs will submit a gap analysis summary memo to the DOU project manager prior to the initiation of Task 3.

TASK 3 — Risk and Resilience Assessment
Jacobs will build upon the 2014 VA and the results of the gap analysis to execute the asset and threat characterizations, which are the first two steps of the J100-10 methodology as indicated below, then will proceed with the remaining steps as indicated in the diagram below.
City of Sacramento Department of Utilities
Water System Risk and Resilience Assessment and Emergency Response Plan Development
Scope of Services

In accordance with the AWIA requirements, and incorporating the AWWA M19 manual, ANSI/WWA J100-10, ANSI/WWA G300, ANSI/WWA G440-17, and ANSI/WWA G430-14 standards as appropriate, the RRA for the DOU water system shall include an assessment of:

1. Risk to the system from malevolent acts and natural hazards
2. Resilience of the pipes and constructed conveyances, physical barriers, source water, water collection and intake, pretreatment, treatment, storage and distribution facilities, electronic, computer, or other automated systems (including the security of such systems) which are utilized by the system
3. Monitoring practices of the system
4. Financial infrastructure of the system
5. Use, storage, or handling of various chemicals by the system
6. Operation and maintenance of the system
7. Evaluation of capital and operational needs for risk and resilience management for the system (optional; TBD)

The results of the risk assessment portion of the RRA will be used as the basis for decisions with DOU regarding acceptable risk and for the development of recommendations to further improve the effectiveness of DOU’s protection and resilience systems if warranted. Jacobs typically prepares planning-level cost estimates for recommendations and can work with DOU on their appropriate phasing and sequencing, as we did for the Security Master Plan and VA work.

Deliverables:

*Draft RRA* – Jacobs will provide DOU with a draft of the RRA by January 1, 2020.

*Final RRA* – After review and revisions, a final RRA will be submitted to DOU prior to the project deadline of February 1, 2020, which is two months prior to the legislative deadline of March 31, 2020. This scope and budget assume that DOU will be responsible for the development and submittal of the certification letter for the RRA.

**TASK 4 — Emergency Response Plan**

Jacobs will prepare and/or revise DOU’s water system emergency response plan upon completion of the RRA. The new or revised emergency response plan shall be specific to the water system, incorporate findings from the completed RRA, and build upon DOU’s existing emergency response documents. Jacobs will provide DOU with a draft and final water system ERP. The RRA and ERP will collectively address the following AWIA requirements:

1. Strategies and resources to improve the resilience of the system, including the physical security and cybersecurity of the system
2. Plans and procedures that can be implemented, and identification of equipment that can be utilized, in the event of a malevolent act or natural hazard that threatens the ability of the community water system to deliver safe drinking water
3. Actions, procedures, and equipment that can obviate or significantly lessen the impact of a malevolent act or natural hazard on the public health and the safety and supply of drinking water provided to communities and individuals, including the development of alternative source water options, relocation of water intakes, and construction of flood protection barriers
4. Strategies that can be used to aid in the detection of malevolent acts or natural hazards that threaten the security or resilience of the system
City of Sacramento Department of Utilities
Water System Risk and Resilience Assessment and Emergency Response Plan Development
Scope of Services

Jacobs will also develop the ERP in accordance with National Incident Management System (NIMS) and Standardized Emergency Management System (SEMS) Incident Command System (ICS) protocol.

Deliverables:

Draft ERP – Jacobs will provide DOU with a draft of the ERP by July 1, 2020.

Final ERP – After review and revisions, a completed ERP will be submitted to DOU prior to the project deadline of August 1, 2020, which is two months prior to the legislative deadline of September 30, 2020. This scope and budget assume that DOU will be responsible for the development and submittal of the certification letter for the ERP.

Budget

The table below indicates Jacobs’ budget by task to deliver the scope of services described in this document. This budget is inclusive of all project labor and expenses, and does not include any services not described by this scope of work. Jacobs will promptly communicate any out-of-scope needs or other budget challenges that arise to DOU’s project manager, and will not proceed with any additional services until and unless authorized by DOU to do so.

<table>
<thead>
<tr>
<th>Sacramento Department of Utilities - Risk and Resilience Assessment and Emergency Response Plan Development</th>
<th>Labor</th>
<th>Expenses</th>
<th>Total Labor plus Expenses</th>
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</thead>
<tbody>
<tr>
<td>Task</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Project Management</td>
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<tr>
<td>2 Document Review and AWIA Requirements Gap Analysis</td>
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<td>$1,050</td>
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<tr>
<td>3 Risk and Resilience Assessment</td>
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<td>4 Emergency Response Plan</td>
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<tr>
<td>TOTAL</td>
<td>$160,255</td>
<td>$5,251</td>
<td>$165,506</td>
</tr>
</tbody>
</table>

“All work will be performed on an hourly rate basis in accordance with Rate Schedule below. Project expenses will be reimbursed at cost plus 5% markup.”

Rate Schedule

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
<th>Hourly Billing Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Manager</td>
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<tr>
<td>RRA Lead</td>
<td>Gist, Forrest</td>
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</tr>
<tr>
<td>ERP Lead</td>
<td>Ellis, Megan</td>
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<td>Cybersecurity Resource</td>
<td>Hesner, Rex</td>
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<tr>
<td>Senior Reviewer</td>
<td>Black, Stacey</td>
<td>$251</td>
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<tr>
<td>Engineering Support Resource</td>
<td>Engineering Support Resource (Smith, Alyssa; TBD)</td>
<td>$150</td>
</tr>
<tr>
<td>Project Delivery Support Resource/Technical Editor</td>
<td>Dancel, Susan</td>
<td>$124</td>
</tr>
</tbody>
</table>
EXHIBIT B
PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR’s Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the “Services”), and for all authorized Reimbursable Expenses, shall not exceed the total sum of $165,506.00.

2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.

3. **CONTRACTOR’s Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.

4. **Payments to CONTRACTOR.**

   A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR’s invoice, in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.

   B. All invoices submitted by CONTRACTOR shall contain the following information:

   (1) Job/Project Name
   (2) CITY’s current Purchase Order Number
   (3) CONTRACTOR’s Invoice Number
   (4) Date of Invoice Issuance
   (5) Work Order Number (if applicable)
   (6) CITY representative identified on the Purchase Order
   (7) CONTRACTOR’s remit address for payment
   (8) Description of services billed under Invoice
   (9) Amount of Invoice (itemize all authorized Reimbursable Expenses)
   (10) Total Billed to Date under Agreement

   C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR’s failure to comply with the invoice format described above.
D. Submitting Invoices:

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

   apinvoices@cityofsacramento.org

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

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

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing the Additional Services is approved by CITY in accordance with CITY’s Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other consultants to perform the Additional Services.

6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR’s costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR’s Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make the records available for inspection and audit by representatives of the CITY upon reasonable written notice.

7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR’s compensation hereunder, including estimated taxes, and shall provide CITY with proof of the payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR’s breach of this Section 7.
EXHIBIT C
PROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

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

or

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

EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT

GENERAL PROVISIONS

1. Independent Contractor.

   A. It is understood and agreed that CONTRACTOR (including CONTRACTOR’s employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR’s assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR’s employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term “Services” shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)

   B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR’s sole discretion based on the CONTRACTOR’s determination that such use will promote CONTRACTOR’s efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.

   C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR’s assigned personnel and subcontractors.

   D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform
services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR’s obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party’s performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR’s personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR’s personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.

5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR’s performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.

6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as “City Information”) that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A
violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term “information” shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party’s trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY’s failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR’s proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked “trade secret” when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff’s attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual “trade secret” designation of such information.

D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated “trade secret” by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.
8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR’s profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR’s profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR’s staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. **Term; Suspension; Termination.**

A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

B. CITY shall have the right at any time to temporarily suspend CONTRACTOR’s performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.

C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:

   (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.

   (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.
10. **Indemnity.**

A. **Indemnity:** CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY’s staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as “Claims”), including but not limited to Claims arising from personal injury or death, damage to personal, real, or intellectual property, or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to, or relate to any negligent act or omission, recklessness, or willful misconduct of CONTRACTOR, its sub-consultants, subcontractors, or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled, or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY.

B. **Insurance Policies; Intellectual Property Claims:** The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY’s rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits, or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

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

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

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

A. **Minimum Scope & Limits of Insurance Coverage**

1) **Commercial General Liability Insurance** providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of CONTRACTOR, its sub-consultants, and...
subcontractors, products and completed operations of CONTRACTOR, its sub-
consultants, and subcontractors, and premises owned, leased, or used by
CONTRACTOR, its sub-consultants, and subcontractors, with limits of not less than
one million dollars ($1,000,000) per occurrence. The policy shall provide
contractual liability and products and completed operations coverage for the term
of the policy.

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

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

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

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

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

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

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

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

(5) **Professional Liability Insurance** providing coverage on a claims made basis for
errors, omissions, or malpractice with limits of not less than one million
($1,000,000) dollars. Professional Liability (Errors and Omissions) insurance:
Is XX Is not ______ [check one] required for this Agreement.

If required, such coverage must be continued for at least 3 year(s) following the completion of all Services and Additional Services under this Agreement. The retroactive date must be prior to the date this Agreement is approved or any Services are performed.

B. Additional Insured Coverage

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

(2) Automobile Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

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

(1) Except for professional liability, CONTRACTOR’s insurance coverage, including excess insurance, shall be primary insurance as respects CITY, its officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of CONTRACTOR’s insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees, or volunteers.

(3) Coverage shall state that CONTRACTOR’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

(4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

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

(1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

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

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

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

F. **Subcontractors**

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

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

A. **Compliance With Regulations:** CONTRACTOR shall comply with the Executive Order 11246 entitled “Equal Opportunity in Federal Employment”, as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the “Regulations”.

B. **Nondiscrimination:** CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

C. **Solicitations for Subcontractors, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for
work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.

D. **Information and Reports:** CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.

E. **Sanctions for Noncompliance:** In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:

   (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;

   (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. **Incorporation of Provisions:** CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY’s written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

   A. **Use Tax Direct Payment Permit:** For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization (“SBE”) in accordance with the applicable SBE criteria and requirements.

   B. **Sellers Permit:** For any construction contract and any construction subcontract in the amount of $5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.

   C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

20. **Local Business Enterprise Participation Requirements.** If the Request for Qualifications or Request for Proposals issued for this Agreement included Local Business Enterprise Participation Requirements (the “LBE Requirements”), CONTRACTOR shall comply with the LBE Requirements, which are by this reference incorporated as if set forth fully herein. The LBE Requirements also can be viewed at: [http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements](http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements).
EXHIBIT E
PROFESSIONAL SERVICES AGREEMENT

ADDITIONAL REQUIREMENTS FOR SURVEYING, MATERIAL TESTING, AND INSPECTION SERVICES

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

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

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

   Contractor Signature

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

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

   Contractor DIR registration #: ________________________________

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

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

4. **Apprentices.** If this Agreement is for the performance of any Public Work, and the amount of the Agreement is $30,000 or more, the Contractor and any subcontractor or subconsultant performing any Public Work under this Agreement shall comply with Sacramento City Code section 3.60.190, section 1777.5 et seq. of the California Labor Code, and implementing regulations set forth in Title 8 of the California Code of Regulations, governing the employment of apprentices. The Contractor and any subcontractor or subconsultant performing Public Work will be subject to penalties for apprenticeship violations in accordance with Labor Code section 1777.7.

5. **Working Hours.** If this Agreement is for the performance of any Public Work, Contractor and any subcontractor or subconsultant performing any Public Work shall comply with, and be subject to enforcement under, the provisions of Sacramento City Code section 3.60.180 and California Labor Code section 1810 et seq., governing the working hours of employees performing Public Work.

6. **Subcontractors.** The Contractor shall include these provisions in every subcontract or subagreement for every lower-tier subcontractor or subconsultant performing Public Work under this Agreement.