

STAFF REPORT

DATE: June 21, 2011

TO: City Council

FROM: Robert A. Clarke, Interim Public Works Director
Stan Gryczko, WWTP Superintendent

SUBJECT: Agreement with Valley Instrumentation for Wastewater Treatment Plant Instrumentation Services

Recommendation

Authorize the City Manager to renew an agreement with Valley Instrumentation, Dixon, California, for Wastewater Treatment Plant instrumentation calibration and repair services. Authorize the City Manager to execute up to three (3) additional annual renewals of agreement for a total contract time of four (4) years.

Fiscal Impact

The fiscal year 11/12 costs are estimated to be \$48,000. This expense is anticipated as part of the 11/12 budget in program 7313, Water Pollution Control Plant, and funded with sewer operations and maintenance funds.

Background and Analysis

Valley Instrumentation's current agreement provides the WWTP with twelve months of preventive maintenance and instrument repair. The general work includes: Programmable Logic Controller (PLC) and Supervisory Control and Data Acquisition (SCADA) system programming, electronic equipment repair, calibrating flow meters, gauges, etc., testing switches, transmitters and thermometers that are located at the Wastewater Treatment Plant and remote sites.

Services performed by Valley Instrumentation require skills not currently possessed by City staff. Services are provided on a time and materials basis. Renewing this agreement with Valley Instrumentation has the following advantages:

1. This contractor has worked at the Wastewater Treatment Plant and has become intimately familiar with our vast and varied instrumentation and electronic equipment, therefore minimizing communication and oversight to perform tasks. Valley Instrumentation has served the City for many years and had an important role with the 1996 plant expansion as a consultant reviewing design plans.
2. The time and materials fee structure improves repair response time (24/7) for vital wastewater treatment control instruments which prevent potential discharge violations without incurring additional standby cost.

Staff requested and received quotes from two additional instrumentation companies in order to assess the competitiveness of Valley Instrumentation's hourly quote. Valley Instrumentation is the

lowest cost per hour of the three quotes received. The other companies' quotes also included additional fees for vehicle and equipment use and after hour emergency response. Valley Instrumentation does not charge additional fees beyond the normal hourly rate.

Based on Valley Instrumentation's familiarity with the Plant instrumentation, low fee structure, history of efficient repair response time and no charge for advice by telephone, staff recommends approving the agreement for instrumentation service with Valley Instrumentation.

Attachments

1. Resolution
2. Consultant Agreement (copy)

RESOLUTION NO. 11-XXX, SERIES 2011

**RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AGREEMENT
WITH VALLEY INSTRUMENTATION
FOR EQUIPMENT INSTRUMENTATION SERVICES OF THE
WASTEWATER TREATMENT PLANT
PROGRAM NO. 7313**

BE IT RESOLVED by the City Council of the City of Davis that the city manager is hereby authorized to execute a consultant agreement by and between the City of Davis, a Municipal Corporation, and Valley Instrumentation, for Wastewater Treatment Plant Instrumentation Services; and

BE IT FURTHER RESOLVED that the City Manager is authorized to approved up to three additional 1-year extensions of the consultant agreement; and

BE IT FURTHER RESOLVED that all terms, conditions, and covenants of said agreement be, and the same are, hereby approved, ratified, and confirmed.

PASSED AND ADOPTED by the City Council of the City of Davis on this 21st day of June, 2011, by the following vote:

AYES:

NOES:

Joseph F. Krovoza
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

Consultant Agreement

[Valley Instrumentation]

Wastewater Treatment Plant Instrumentation Program No. 7313

This Agreement, made and entered into on this 1st day of July, 2011, by and between the City of Davis, a Municipal Corporation of the State of California, hereinafter referred to as “**City**,” and **Consultant**, located at 945 Monique Way, Dixon, CA 95620, hereinafter referred to as “**Consultant**.”

Witnesseth:

Whereas, City desires to retain certain professional services for **Wastewater Treatment Plant Instrumentation, Program No. 7313**; and

Whereas, City desires to engage **Consultant** to provide these services by reason of its qualifications and experience for performing such services and **Consultant** has offered to provide the required services on the terms and in the manner set forth herein.

Now, Therefore, in consideration of their mutual covenants, the parties hereto agree as follows:

1. **Definition.**

- a) The word “City” as used in this **Agreement** shall mean and include all the territory lying within the municipal boundaries of the City of Davis, California, as presently existing, plus all territory which may be added thereto during the term of this **Agreement** by annexation or otherwise.
- b) The term “City Manager” shall mean the duly appointed City Manager of the City of Davis, California, or a designated representative.
- c) The term “City Attorney” shall mean the duly appointed City Attorney of the City of Davis, California, or a designated representative.
- d) The term “City Clerk” shall mean the duly appointed City Clerk of the City of Davis, California, or a designated representative.

2. **Project Coordination.**

- a. **City.** The City Manager shall be representative of **City** for all purposes under this **Agreement**. Michael Torrence is hereby designated as the **Project Manager** for the City Manager, and the **Project Manager** shall supervise the progress and execution of this **Agreement**.
- b. **Consultant.** **Consultant** shall assign a single **Project Manager** to have overall responsibility for the progress and execution of this **Agreement** for **Consultant**. Dave Mitchell is hereby designated as the **Project Manager** for **Consultant**. Should circumstances or conditions subsequent to the execution of this **Agreement** require a substitute **Project Manager** for any reason, the **Project Manager** substitution shall be subject to the prior written acceptance and approval of the **City's Project Manager**.

3. **Duties of Consultant.**

- a. **Services to be Furnished.** **Consultant** shall provide all specified services as set forth in the specific Scope of Work contained in Attachment "A" to this **Agreement**, and is incorporated herein by this reference. The **Consultant** shall provide professional services to complete the tasks described in Attachment "A" and any amendments thereto. The Scope of Work may be amended during the application of this **Agreement**.
- b. **Consultant** costs incurred to negotiate an **Agreement** with the **City** shall be included in overhead as part of the multiplier.
- c. **Cost Estimating.** **No cost estimating is anticipated for the scope of this contract.**
- d. **Laws to be Observed.** **Consultant** shall provide professional services in compliance with laws and regulations which govern the work under this **Agreement**.
- e. **Ownership and Control of Proprietary Rights.**
 - 1) The plans, specifications, estimates, programs, reports, models, and other material prepared by or on behalf of **Consultant** under this **Agreement** including all drafts and working documents, and including electronic and paper forms (collectively the "Documents"), shall be and remain the property of the City, whether the Project is completed or not. **Consultant** shall deliver all Documents to City upon (1) the substantial completion date of the Project, (2) the date of termination of this **Agreement** for any reason, or (3) at any time requested by City, upon five (5) days written notice.
 - 2) The Documents may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable in connection with completion

and maintenance of, and additions to, the Project, without further employment of or payment of any compensation to **Consultant**; provided, however, that if this Agreement is terminated for any reason prior to completion of the Project and if under such circumstances City uses, or engages the services of and directs another **Consultant** to use, such documents to complete the Project, City agrees to release **Consultant** from any responsibility for the conformance of the incomplete portions of the Project to the Documents and to hold **Consultant** harmless from any and all liability, costs, and expenses (including reasonable legal fees and disbursements), relative to claims arising out of matters and/or events which occur subsequent to the termination of this Agreement as a result of causes other than the fault or negligence of **Consultant**, or anyone for whose acts it is responsible, in preparation of the Documents. **Consultant** shall not be responsible for deficiencies solely attributable to modifications to the Documents performed by others, or that arise from use of the Documents on a site other than that shown in the Documents.

- 3) **Consultant** retains the copyright in and to the intellectual property depicted in the Documents subject to **Consultant's** limitations and City's rights and licenses set forth in this Agreement. City's ownership interest in the Documents includes the following single, exclusive license from **Consultant** for the Project: **Consultant**, for itself, its employees, heirs, successors and assigns, hereby grants (and if any subsequent grant is necessary, agrees to grant) to City an irrevocable, perpetual, royalty-free, fully paid-up, sole and exclusive license and right to use and exercise any and all of the copyrights or other intellectual property rights that **Consultant** may author or create, alone or jointly with others, in or with respect to the Documents, including without limitation all drawings, designs and graphic representations. City's license shall include the right to sublicense, shall be for all purposes with respect to each right of copyright, and shall be without restriction, except that City may not build or sublicense others to build an additional work of improvement that embodies **Consultant's** copyright protected designs without **Consultant's** prior written consent, which consent **Consultant** may condition solely upon additional payment to **Consultant** which shall be determined through reasonable and good faith negotiations between **Consultant** and City. Notwithstanding the foregoing, City may use the Documents to construct or have constructed at the location of the Project a work of improvement similar or identical to the Project if the Project does not proceed as contemplated in this Agreement, and such work of improvement shall not constitute an "additional work of improvement" under this paragraph.

- 4) **Consultant** shall cause to be included in all of its agreements with subconsultants regarding the Project, language which is consistent with this Section.
 - 5) All reports, information, data, and exhibits prepared or assembled by **Consultant** in connection with the performance of any services under this Agreement are confidential until released by the City to the public, and the **Consultant** shall not make any of these documents or information available to any individual or organization not employed by **Consultant** or City without the written consent of the City before any such release.
- f. **Copies of Reports and Information.** If City requests additional copies of reports, drawings, specifications, or any other material which **Consultant** is required to furnish in limited quantities as part of the services under this Agreement, **Consultant** shall provide such additional copies as are requested, and City shall compensate **Consultant** for the costs of duplicating of such copies at **Consultant's** cost.
- Electronic methods of sharing documents, information, messages, etc., such as via internet shall be utilized to the extent possible to minimize extraneous copies, reimbursable expenses, and also to meet the intent of Appendix "D." City shall specify document format for the project to ensure compatibility, efficiency, and minimize software translation and/or transmission error.
1. Word Processor Documents - MS Word 2002
 2. Spreadsheets - MS Excel 2002
- g. **Electronic Copies.** **Consultant** agrees that any and all reports, drawings, specifications, or any other material required to be produced by **Consultant** under the terms of this Agreement shall also be made available to City, as part of the **Consultant's** responsibilities under this Agreement, in the electronic or digital form used to prepare the report, drawing, specification, or other material.
- h. **Use of Recycled Paper Products.** All paper used for reports that are required to be submitted under this Agreement shall be produced on recycled paper conforming to the minimum content standards as contained in Attachment "D," "Definitions and Minimum Content Standards for Recycled Paper Products," and is incorporated herein by the reference. All such reports shall have the front cover labeled in such a way as to clearly identify that the report was produced on recycled paper. Where practicable, the pages of all such reports shall be produced double-sided.

- i. **Qualifications of Consultant.** **Consultant** represents that it is qualified to furnish the services described under this **Agreement**. As evidence thereof, **Consultant** agrees that one or more members or employees of the firm are, and at all times shall be, appropriately licensed professionals by the State of California and that the services to be provided under this **Agreement** will be performed by them or under their direct supervision.

4. **Compensation and Invoicing.**

- a. The fee for this **Agreement** shall be at the time and materials wage rate estimate in the amount of \$48,000 but does not include unscheduled work that is not listed within the scope of work (Attachment A). The \$95 per hour fee shall not increase during the term of this agreement. This agreement may be extended as per Section 7. **Consultant** may request an hourly rate increase, not to exceed 5% annually, in writing to the **Project Manager** for the City at least 30 days prior to renewing this agreement. Payment shall be made by the **City** pursuant to the City's vendor schedule.
- b. The **City** shall make payments for work that is completed as listed in the cost estimate sheet in Attachment "B."
- c. For the full performance of the services described herein by **Consultant**, **City** shall pay **Consultant** monthly upon submission by **Consultant** of its itemized billings in duplicate, in accordance with the provisions and Fee Schedule contained in Attachment "B" to this **Agreement**, and is incorporated herein by this reference.
- d. For contracts that are paid on an hourly basis, with a not-to-exceed amount, a time sheet shall be attached to **Consultant's** invoice for each person for which hours are claimed. A time sheet is also required for any subconsultant hours claimed on the invoice.

5. **Duties of City.**

City shall provide all specified data, reports, drawings, records or similar information as described in the Scope of Work contained in Attachment "A" to the **Agreement** or subsequently requested by the **Consultant**. This requirement is applicable to only such data, reports, drawings, records or similar information as may be in the possession of **City**. Nothing contained herein shall obligate **City** to incur any expense in connection with completion of studies or acquisition of information not otherwise in the possession of **City**.

6. **Material and Resources Furnished by City**

- a. Staff time to assist **Consultant** in work to be conducted under Scope of Work.
- b. Reproduction of maps and as-built drawings existing and available in Public Works files.

7. **Term**. This **Agreement** shall commence on the date first written above and shall continue in full force and effect until work is complete. **Consultant** shall begin work upon receipt of written authorization and shall proceed with due diligence to complete their work, and unless otherwise extended, the Agreement shall be deemed to be completed and shall terminate on June 30, 2012. This agreement may be renewed on an annual basis for three (3) additional one year terms.
8. **Temporary Suspension**.
 - a. The City Manager shall have the authority to suspend this **Agreement**, wholly or in part, for such period as the City Manager deems necessary due to unfavorable conditions or to the failure on the part of **Consultant** to perform any provision of this **Agreement**.
 - b. In the event suspension exceeds 90 days, the terms are subject to renegotiation. Due to the short time frame and nature of this project, there will be no temporary suspension of the project.
9. **Extension of Term**.
 - a. In the event that the services called for under this **Agreement** are not completed within the time specified above, the City Manager shall have the option to extend the time for completion. This paragraph does not preclude the recovery of damages for delay by either party.
10. **Suspension; Termination**.
 - a. **Right to Suspend or Terminate**. If **Consultant** should be adjudged bankrupt, if it should make a general assignment for the benefit of its creditors, if a receiver should be appointed on account of its insolvency, or in a Termination for Convenience (see below), or if it or any of its subconsultants, if any, should violate any provision of this **Agreement**, the City Manager may serve written notice on **Consultant** or its surety, if any, of **City's** intention to suspend or terminate this **Agreement**. Such notice shall contain the reason or reasons for such suspension or termination. Unless, within 10 days after the service of such notice, **Consultant** makes arrangements satisfactory to the City Manager to correct the condition or conditions giving rise to the notice of suspension or termination, the suspension or termination shall take immediate effect, and **Consultant** shall immediately discontinue its performance under this **Agreement**.
 - b. **Termination for Convenience**. **City** reserves the absolute right to terminate this **Agreement**. In the event of termination without cause, **Consultant** shall be entitled to payment in an amount not to exceed the Contract price which shall be calculated as follows: 1) **Consultant's** cost for that part of the Work actually completed by **Consultant** and accepted by **City**; plus 2) Other reasonable costs actually incurred by **Consultant** and accepted by **City** in connection with the termination. There shall be deducted from such sums as provided in this section the amount of any payments made to **Consultant** prior to the date of termination of this **Agreement**. **Consultant** shall not be entitled to any claim or lien against

City for additional compensation or damages in the event of such termination and payment.

If this **Agreement** is terminated by **City** for default, and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a Termination for Convenience under this section, and **Consultant** shall be entitled to receive only the amounts payable hereunder in the event of a Termination for Convenience.

- c. **Payment.** Upon such suspension or termination, **Consultant** shall be paid for all services actually rendered to **City** to the date of such suspension or termination; provided, however, if this **Agreement** is suspended or terminated for fault of **Consultant**, **City** shall be obligated to compensate **Consultant** only for that portion of **Consultant's** services which are of benefit to **City**.
- d. **Return of Materials.** Upon such suspension or termination, **Consultant** shall turn over to the City Manager computations, and other data, whether or not completed, prepared by **Consultant** or its subconsultants, if any, in connection with this **Agreement**. Such materials shall become the permanent property of **City**. **Consultant**, however, shall not be liable for **City's** use of incomplete materials or for **City's** use of complete documents if used for other than the project contemplated by this **Agreement**.

11. **Inspection.**

Consultant shall furnish **City** with every reasonable opportunity for **City** to ascertain that the services of **Consultant** are being performed in accordance with the requirements and intentions of this **Agreement**. All work done and all materials furnished, if any, shall be subject to the **Project Manager's** inspection and approval. The inspection of such work shall not relieve **Consultant** of any of its obligations to fulfill its **Agreement** as prescribed.

12. **Independent Judgment.**

Failure of **City** to agree with **Consultant's** independent findings, conclusions or recommendations, if the same are called for under this **Agreement**, on the basis of differences in matters of judgement shall not be construed as a failure on the part of **Consultant** to meet the requirements of this **Agreement**.

13. **Assignment; Subconsultants; Employees**

- a. **Assignment.** Both parties shall give their personal attention to the faithful performance of this **Agreement** and shall not assign, transfer, convey, or otherwise dispose of this **Agreement** or any right, title or interest in or to the same or any part thereof without the prior written consent of the other party, and then only subject to such terms and conditions as the other party may consent to any subsequent assignment. Any assignment without such approval shall be void, and, at the option of the other party, shall terminate this **Agreement** and any license or privilege granted herein. This **Agreement** and any interest herein shall

not be assignable by operation of law without the prior written consent of the other party.

- b. **Subconsultants; Employees.** **Consultant** shall be responsible for employing or engaging all persons necessary to perform the services of **Consultant** hereunder. No subconsultant of **Consultant** will be recognized by **City** as such; rather, all subconsultants are deemed to be employees of **Consultant**, and it agrees to be responsible for their performance. **Consultant** shall give its personal attention to the fulfillment of the provisions of this **Agreement** by all of its employees and subconsultants, if any, and shall keep the work under its control. If any employee or subconsultant of **Consultant** fails or refuses to carry out the provisions of this **Agreement** or appears to be incompetent or to act in a disorderly or improper manner, **Consultant** shall be discharged immediately from the work under this **Agreement** on demand of the **Project Manager**.

14. **Notices.**

All notices hereunder shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To **City**: Michael Torrence, Project Manager
Public Works Department
City of Davis
23 Russell Boulevard
Davis, California 95616-3896

To **Consultant**: Dave Mitchell, Project Manager
Valley Instrumentation
945 Monique Way
Dixon, CA 95620

15. **Conflict of Interest.**

- a. **Consultant** certifies that it has disclosed to **City** any actual, apparent or potential conflicts of interest that may exist or develop relative to the services to be provided in the Scope of Work and this **Agreement**.
- b. **Consultant** agrees to advise **City** of any actual, apparent or potential conflicts of interest that may develop subsequent to executing this **Agreement**.
- c. **Consultant** agrees to refrain from other engagements that may present an actual, apparent or potential conflict of interest with respect to this **Agreement**. **Consultant** may request, in writing, a waiver of these requirements from **City**. The request shall contain a disclosure and a description of the actual, apparent or potential conflict of interest. Approval of waiver requests shall require City Council action and amendment of the Consulting Services Agreement.

16. **Independent Contractor.**

It is expressly agreed that, in the performance of the services hereunder, **Consultant** shall at all times be deemed an independent contractor and not an agent or employee of **City**.

17. **Indemnity.**

- a. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8, **Consultant** shall defend (with legal counsel reasonably acceptable to the City) indemnify and hold harmless City and its officers, agents, departments, officials, representatives and employees (collectively "City Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of **Consultant** or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of **Consultant**, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control in connection with the performance of its obligations under this Agreement (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any City Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of such City Indemnitee.
- b. Neither termination of this Agreement nor completion of services shall release **Consultant** from its obligations under this Section 17, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.
- c. **Consultant** agrees to obtain executed indemnity agreements, naming City as an indemnified party, with provisions identical to those set forth in this section, from each and every subconsultant or any other person or entity involved by, for, with or on behalf of **Consultant** in the performance of this Agreement. If **Consultant** fails to obtain such indemnity obligations from others as required, **Consultant** shall be fully responsible for all obligations under this Section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of **Consultant** and shall survive the termination of this Agreement or this section.
- d. **Consultant's** compliance with the insurance requirements does not relieve **Consultant** from the obligations described in this Section 10, which shall apply whether or not such insurance policies are applicable to a claim or damages.

18. **Workers' Compensation.**

Consultant certifies that it is aware of the provisions of the Labor Code of the State of California, which requires every employer to be insured against liability for Workers'

Compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work of this **Agreement**.

19. **Insurance.**

Consultant, at its sole cost and expense, shall obtain and maintain in full force and effect from the date of execution of this **Agreement** the following described insurance coverage insuring not only **Consultant** and its subconsultants, if any, but also **City**, its officers, agents and employees, with the exception of Workers' Compensation and Employer's Liability Insurance, and Professional Liability:

	Policy	Coverage
(a)	Commercial General Liability, including Broad Form Contractual and Personal Injury	<u>Bodily Injury and Property Damage:</u> \$1,000,000 Each Person, Each Occurrence <u>Bodily Injury and Property Damage:</u> \$2,000,000 Aggregate
(b)	Automobile Liability, including Owned (if any), Hired and Non-Owned Auto vehicles	<u>Bodily Injury:</u> \$100,000 Each Person \$300,000 Each Occurrence <u>Property Damage:</u> \$100,000 Each Occurrence
(c)	Worker's Compensation <i>(Note: Waiver of Subrogation is required for this project.)</i>	Statutory
(d)	Professional Liability, including Errors, Omissions, Malpractice (if applicable), Negligent Performance	<u>All Damages:</u> \$1,000,000 on a Claims-Made Annual Aggregate Basis
<i>(Insurance underwriter shall submit proof of insurance using the enclosed City forms.)</i>		

20. **Agreement Binding.**

The terms, covenants and conditions of this **Agreement** shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subconsultants of both parties.

21. **Waivers.**

The waiver by either party of any breach or violation of any term, covenant or condition of this **Agreement** or of any provisions, ordinance, or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance, or law or of any subsequent breach

or violation of the same or of any other term, covenant, condition, ordinance or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this **Agreement** or of any applicable law or ordinance.

22. **Costs and Attorneys' Fees.**

The prevailing party in any action brought to enforce the terms of this **Agreement** or arising out of this **Agreement** may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

23. **Nondiscrimination.**

No discrimination shall be made in the employment of persons under this **Agreement** because of the race, color, national origin, ancestry, religion, physical or mental handicap, sex, or sexual orientation of such persons. The contents of Attachment "C" are hereby incorporated and made a part of this **Agreement**.

24. **This Agreement** shall be deemed to include any provision required by law to be inserted herein, whether actually inserted or not.

25. **Agreement Contains All Understandings.** This document represents the entire and integrated **Agreement** between **City** and **Consultant** and supersedes all prior negotiations, representations, or **Agreements**, either written or oral. This document may be amended only by written instrument, signed by both **City** and **Consultant**. All provisions of this **Agreement** are expressly made conditions. The **Agreement** shall be governed by the laws of the State of California.

26. **Standard of Care.** In providing services under this Agreement, Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

27. **Limitation of Liability.**

- a. To the fullest extent allow by law, **Consultant's** liability for City's damages will not, in the aggregate, exceed the sum equal to 125% of the **Consultant's** fee. This limitation of liability will apply whether **Consultant's** liability arises under breach of contract or warranty, tort, including negligence, strict liability, statutory liability, and any other cause of action, and shall include **Consultant's** officers, affiliated corporations, employees and subcontractors.
- b. The foregoing limitation of **Consultant's** liability shall not apply to (a) claims based on **Consultant's** intentional misconduct, (b) claims based on **Consultant's** gross negligence (defined for purposes of this Section 27 as either a "want of even scant care" or "an extreme departure from the ordinary standard of conduct"), or (c) claims covered by **Consultant's** insurance.

28. **Hazardous Materials**. City represents to Consultant that, to the best of its knowledge, no hazardous materials are present at the project site. It is acknowledged by both parties that Consultant's scope of services does not include services related in any way to hazardous materials.
- a. In the event Consultant or any other party encounters undisclosed hazardous materials on the project site, Consultant shall have the obligation to notify City in writing and, to the extent required by law or regulation, the appropriate governmental officials, and Consultant may, at its option and without liability for delay, consequential or any other damages to City, suspend performance of services on that portion of the project site affected by hazardous materials until City: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and/or (ii) City determines that the work can go forward on that portion of the project site in compliance with applicable laws and regulations. If Consultant's services hereunder cannot be performed because of the existence of hazardous materials, Consultant shall be entitled to terminate this Agreement for cause on 30 days written notice. City shall fully indemnify, defend, and hold harmless the Consultant and its employees, agents and representatives for any violation of environmental, hazardous waste, hazardous materials (including petroleum and petroleum derivatives) caused by City or City's employees, agents or representatives including any and all costs and liability related to investigation, clean up, settlement amounts, and/or fines, including attorneys' fees, incurred by the Consultant related to hazardous materials found at the project site.
 - b. Consultant and Consultant's agents, employees and subcontractors shall not bring any hazardous materials on the property without City's written consent. Consultant shall be fully responsible for the safe handling and disposal of any hazardous materials Consultant, and Consultant's employees, agents or subcontractors bring onto the project site. Consultant shall fully indemnify, defend, and hold harmless City and City's employees, agents, and representatives for any violation of environmental, hazardous waste, hazardous materials (including petroleum and petroleum derivatives) caused by Consultant or Consultant's employees, agents, representatives or subcontractors including any and all costs and liability related to investigation, clean up, settlement amounts, and/or fines, including attorneys' fees, incurred by the City for related to hazardous materials brought onto the project site by Consultant and/or Consultant's employees, agents, representative or subcontractors.

In Witness Whereof, City and Consultant have executed this **Agreement** the day and year first above written.

City of Davis
A Municipal Corporation,
State of California

Consultant
Valley Instrumentation

Paul Navazio
Interim City Manager

Dave Mitchell
Owner

Approved as to Form:

Harriet Steiner
City Attorney

Consultant Agreement
[Valley Instrumentation]

**Wastewater Treatment Plant Instrumentation
Program No. 7313**

**Attachment A
Scope of Work**

The following table shows the scheduled service for each piece of equipment at the Wastewater Treatment Plant.

Instrument	ID #	Inspect / Calibrate Frequency	Priority	Service Month
#1 Influent Flow Transmitter	FT10071	S	1	January/July
#2 Influent Flow Transmitter	FT10072	S	1	January/July
#3 Influent Flow Transmitter	FT10073	S	1	January/July
#4 Influent Flow Transmitter	FT10074	S	1	January/July
Inf. WW Ultrasonic Level Transmitter	LIT10051A	A	1	February
Inf. WW Bubbler Level Transmitter	LIT10051B	A	1	February
Inf. WW Ultrasonic Level Indicator	FCS10 LIT10051A	A		February
Inf. WW Bubbler Level Indicator	FCS10 LIT10051B	A		February
Inf. High WW Level Float Switch	LS10052C	A	2	February
Inf. High WW Level Sensor – Hydraulic Unit Control	LS10052B	A	1	February
Inf. Headgate Position Transmitter	ZT10001	A	2	February
Inf. Headgate Position Indicator	FCS10 ZI10001	A	2	February
Inf. Sump Pump On/Off Float Switches	LS10054A+B	A	1	February
Inf. Sump Pump High Level Float Switch	LS10054C	A	1	February
Inf. Pump Discharge Gauges	PI10060ABCD	A	2	February
Oxidaton Pond Flow Meter	FIT40071	A	2	February
Aerated Pond Flow Meter	FIT40072	A	2	February
Primary Sludge Flow Transmitter	FIT30571	A	1	February
#1 Sludge Pump Low Pressure Switch	PSL/PI30563	A	2	December
#2 Sludge Pump Low Pressure Switch	PSL/PI30562	A	2	December
#3 Sludge Pump Low Pressure Switch	PSL/PI30561	A	2	December
#1 Sludge Pump High Pressure Switch	PSH/PI30566	A	1	December
#2 Sludge Pump High Pressure Switch	PSH/PI30565	A	1	December
#3 Sludge Pump High Pressure Switch	PSH/PI30564	A	1	December
#2 Scum Pump Low Pressure Switch	PSL/PI30464	A	3	December
#1 Scum Pump Low Pressure Switch	PSL/PI30463	A	3	December
#1 Scum Pump High Pressure Switch	PSH/PI30462	A	1	December

*Attachment A
Scope of Work*

Instrument	ID #	Inspect / Calibrate Frequency	Priority	Service Month
#2 Scum Pump High Pressure Switch	PSH/PI30461	A	1	December
OLF Recycle Valve Position Transmitter	ZIT45121	A	3	July
OLF WW Level Transmitter	LIT45151	A	1	July
Strainer Inlet Pressure Transmitter	PIT45161	A	1	July
Strainer Outlet Pressure Transmitter	PIT45162	A	1	July
OLF Flow Transmitter	FIT45171	A	1	July
OLF WW Level Indicator	FCS 50 LI45151	A	2	July
OLF Flow Indicator	FCS50 FI45171	A	2	July
OLF Pump Discharge Pressure Indicator	FCS 50 PI45162	A	2	July
Eff. WW Level Transmitter	LIT50051	A	1	July
Eff. WW Level Indicator	FCS50 LI50051	A	2	July
CCT EFF Flow Transmitter	FIT85071	S	1	June
CCT CL ₂ Residual Transmitter	AIT85081	A	0	June
CFE CL ₂ Residual Transmitter	AIT85082	A	0	June
DFE CL ₂ Residual Transmitter	AIT85084	A	0	June
CCT EFF pH Meter	AIT85089	A	2	April
CCT EFF Temperature Transmitter	AIT85080	A	2	April
CCT High Level Sensor	LS85051B	A	1	April
CCT Low Level Sensor	LS85051A	A	1	April
East 3W Pressure Transmitter	PIT90061	A	2	April
East 3W Flow Transmitter	FCS90 FIT90071	A	2	April
East 3W Pressure Indicator	FCS90 P190061	A	2	April
West 3W Pressure Transmitter	PIT90062	A	2	April
CL ₂ Storage Leak Transmitter	AIT85181	Q	1	Mar/Jul/Sept/Dec
CL ₂ Feed Room Leak Transmitter	AIT85182	Q	1	Mar/Jul/Sept/Dec
CL ₂ Storage Leak Transmitter	AIT85181	M (bump test)	1	JFMAMJJASOND
CL ₂ Feed Room Leak Transmitter	AIT85182	M (bump test)	1	JFMAMJJASOND
CL ₂ A Bank Rupture Switch	PSH85162A	A	1	July
CL ₂ Switchover Pressure Switch	PSL85161	A	1	July
CL ₂ Vacuum Check Unit Low Temperature Switch	TSL85184	A	1	July
Chlorinator 1 Low Vacuum Switch	PS85261AL	A	1	May
Chlorinator 1 High Vacuum Switch	PS85261AH	A	1	May
Chlorinator 2 Low Vacuum Switch	PS85262AL	A	1	May
Chlorinator 2 High Vacuum Switch	PS85262AH	A	1	May
Chlorinator 1 Positioner	-	A	2	May
Chlorinator 2 Positioner	-	A	2	May
Chlorinators Injector Vacuum Gauges	PI85260A&B	A	2	May
Chlorinators Supply Vacuum Gauges	PI85261A&B	A	2	May
PLC – Review / Compare Dates On All PLC Programs	-	A	1	JFMAMJJASOND
SO ₂ Storage Leak Transmitter	AIT85581	Q	1	Mar/Jun/Sept/Dec
SO ₂ Feed Room Leak Transmitter	AIT85582	Q	1	Mar/Jun/Sept/Dec
SO ₂ Storage Leak Transmitter	AIT85581	M (bump test)	1	JFMAMJJASOND

*Attachment A
Scope of Work*

Instrument	ID #	Inspect / Calibrate Frequency	Priority	Service Month
SO ₂ Feed Room Leak Transmitter	AIT85582	M (bump test)	1	JFMAMJJASOND
SO ₂ "A" Bank Rupture Switch	PSH85562A	A	1	July
SO ₂ "B" Bank Rupture Switch	PSH85562B	A	1	July
SO ₂ Liquid Line Pressure Switch	PSH85562C	A	1	July
SO ₂ Evaporator Rupture Switch	PSH85563	A	1	July
SO ₂ Switchover Pressure Switch	PSL85561	A	1	July
SO ₂ Vacuum Check Unit Low Temperature Switch	TSL85584	A	1	June
SO ₂ Evaporator Water Hi/Lo Temperature Switch	TSL85583A/B	A	1	June
SO ₂ Evaporator Temperature Control Switch	TS85583	A	1	June
SO ₂ Evaporator Water Low Level Switch	LS85551	A	2	June
SO ₂ Evaporator Gas Pressure Gauge	-	A	2	June
SO ₂ Evaporator Gas Temperature Gauge	-	A	2	June
SO ₂ Evaporator Water Temperature Gauge	-	A	2	June
Sulphonator Low Vacuum Switch	PS85261	A	1	June
Sulphonator High Vacuum Switch	PS85661AH	A	1	June
Sulphonator Positioner	-	A	2	June
Sulphonator Injector Vacuum Gauge	PI85660	A	2	June
Sulphonator Supply Vacuum Gauge	PI85661	A	2	June
Digester 1 Sludge HT-K Inlet Temp Transmitter	TIT60181	A	3	April
Digester 1 Sludge HT-K Outlet Temp Transmitter	TIT60182	A	3	April
Digester 1 Sludge HT-K Outlet Press Transmitter	PIT60161	A	3	April
Digester 1 Sludge Level Transmitter	LT60151	A	1	April
Digester 1 Floating CVR Level Transmitter	LT60152	A	2	April
Digester 1 Gas Recirc Blower SVC Press Switch	PS60162	A	3	April
Digester 1 Gas Recirc Blower Discharge Temp Switch	TS60162	A	3	April
Digester 1 Flowmeter	FIT60171	S	1	April/Oct
Digester 1 Pressure Transmitter	PIT60163	A	2	April
Digester 1 Heat-X Inlet Pressure Gauge	PI80461	A	3	April
Digester 1 Heat-X Outlet Pressure Gauge	PI80462	A	3	April
Digester 1 Sludge Temperature Controller	TIC60181	A	3	April
Digester 2 Sludge Heat-X Inlet Temp Transmitter	TIT60281	A	2	January
Digester 2 Sludge Heat-X Outlet Temp Transmitter	TIT60282	A	2	January
Digester 2 Sludge Heat-X Inlet Pressure Gauge	PI60268	A	2	January
Digester 2 Sludge Heat-X Outlet Pressure Gauge	PI60269	A	2	January
Digester 2 Pressure Gauge /Level Transmitter	PI60267	A	2	January
Digester 2 Heat-X Water Outlet Thermometer	T180582	A	2	January
Digester 2 Heat-X Water Inlet Thermometer	T180581	A	2	January
Digester 2 Heat-X Water Temperature Controller	TC80580	A	2	January
Digester 2 Heat-X Circ Pump Outlet Press Gauge	P180562	A	2	January
Digester 2 Heat-X Circ Pump Inlet Press Gauge	P180561	A	2	January
Digester 2 Sludge Standpipe Level Transmitter	LIT60251	A	1	January
Digester 2 Sludge Trans Pump Inlet Press Switch/ Gauge	PI/PS60265	A	1	January
Digester 2 Sludge Trans Pump Outlet Press Switch/ Gauge	PI/PS60266	A	1	January
Digester 2 Sludge Recirc Pump SVC Switch/ Gauge	PI/PS60261	A	3	January
Digester 2 Sludge Recirc Pump Discharge Switch/	PI/PS60262	A	1	January

*Attachment A
Scope of Work*

Instrument	ID #	Inspect / Calibrate Frequency	Priority	Service Month
Gauge				
Digester 1 & 2 Sludge Inlet Gauge (4 ea)	-	A	3	January
Boiler Methane Gas Press. XMTR	PIT80560	A	2	February
Waste Gas Burner Start Switch	PS80062	A	1	February
Waste Gas Burner Pilot Pressure Gauge	PI80061	A	1	February
Waste Gas Burner Methane Pressure Gauge	PI80062	A	3	February
Methane Gas Flowmeter	FIT80171	S	1	April/October
Heated Water Main Loop Temperature Transmitter	TIT80381	A	1	October
Heater Water Loop Temperature Controller	TIC80181	A	1	October
Heated Water Loop Diversion Valve	PCV80100	A	1	October
Low Methane Pressure Cutout Switch	PS8061	A	2	October
300kw Low Propane Pressure Cutout Switch	PS80162	A	2	October
Hot Water Return Line Temperature Gauge	TI80181	A	2	October
Hot Water Feed Line Temperature Gauge	TI80182	A	2	October
Boiler Hot Water Temperature Control Switch	TC80181	A	1	October
Boiler Water High Temperature Cutout Switch	TS80181	A	1	October
Boiler Low Water Level Cutout Switch	LS80151	A	1	October
Boiler High Pressure Cutout Switch	PS80163	A	1	October
Boiler Hot Water Pressure Transmitter	PIT80160	A	1	October
Boiler Exhaust Temperature Gauge		A	1	October
HV Unit / Pipe Chase Temperature Controller	TC80680	A	2	September
HV Unit Coil Outlet Temperature Gauge	TI80682	A	2	September
HV Unit Coil Inlet Temperature Gauge	TI80681	A	2	September
Hydropneumatic Tank Level Transmitter	LIT90351	A	1	May
Hydropneumatic Tank Pressure Transmitter	PIT90361	A	1	May
Plant Air Pressure Transmitter	PIT90461	A	1	May
75KW Gen Used Gas Flow Transmitter	FIT81071	S	1	April/October
75KW Gen Water Jacket Temperature Controller	TIC81081	A	1	May
75KW Gen Water Jacket Temperature Transmitter	TT81081	A	1	May
Digester Gas Pressure Transmitter	PIT81061	A	1	May
Propane Gas Pressure Transmitter	PIT81062	A	1	May
75KW Ready to Load / Hi Temperature Switch	TC81082	A	2	May
75KW Water Jacket Diversion Valve	PCV81061	A	2	May
Methane Pressure Low Switch	PSL81084	A	3	May
Methane Pressure Gauge	PI81084	A	3	May
Various 75KW Generator Thermometers (4)	-	A	3	May
Various 75KW Generator Pressure Gauges (5)	-	A	3	May
300 KW Propane Low Pressure Switch	PSL81085	A	1	May
300 KW High Water Temperature Switch	TS81083	A	1	May
OPS Building HVC Temperature Gauges (6)	-	A	3	May
OPS Building HVC Pressure Gauges (9)	-	A	3	May
Wetlands #1 Effluent Pump Flow Meter	FIT95011	A	1	January
Wetlands #2 Effluent Pump Flow Meter	FIT95012	A	1	January
Wetlands #3 Effluent Pump Flow Meter	FIT95013	A	1	January

*Attachment A
Scope of Work*

Consultant Agreement
[Valley Instrumentation]

**Wastewater Treatment Plant Instrumentation
Program No. 7313**

**Attachment B
Charge-Out Rate and Fee Schedule**

A. Compensation

For items listed in Attachment A, Scope of Work, the **City** shall compensate **Consultant** on a time and materials basis estimated in the amount of \$48,000. Details of the tasks are included in Attachment A.

B. Reimbursable Expenses

1. The hourly billing rate as indicated at the end of this attachment, Charge Out Rate, shall cover standard overhead and profit, including telephone charges, miscellaneous copying costs, first class postage and computer use. *These expense items shall not be reimbursable as separate expenses or fees.*
2. Other reimbursable expenses specific to the project are itemized below:
 - a. For round trips exceeding 75 miles, mileage exceeding 75 miles will be reimbursable at \$0.50; otherwise, mileage is included in overhead as part of the multiplier.
 - b. Express Mail.
 - c. Third Party Reprographic Services: Invoice plus 10%.
 - d. Other items as may be pre-approved by **City**.

C. Mark up

Mark up for subconsultants shall be limited to 10 percent.

*Attachment B
Charge Out Rate and Fee Schedule*

D. Additional Services

Should the **City** desire that **Consultant** provide additional services, such services shall be authorized, in writing, by the **City**. Compensation for additional services shall be at the Charge Out Rates.

F. Charge-Out Rates

<u>Classification</u>	<u>Hourly Rate</u>
Instrumentation Technician	95.00

Consultant Agreement
[Valley Instrumentation]

**Wastewater Treatment Plant Instrumentation
Program No. 7313**

Attachment C
Fair Employment Practices Addendum

1. **In the performance of this contract/Agreement, the Consultant** will not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, sex*, age*, national origin, physical or mental handicap*, marital status, sexual orientation*, or place of birth. The **Consultant** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex*, age*, national origin, physical or mental handicap*, marital status, sexual orientation, or place of birth. Such action shall include, but not be limited, to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The **Consultant** shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the **City** setting the provisions of this Fair Employment Practices section.

2. The **Consultant** will permit access to his records of employment, employment advertisement, application forms, and other pertinent data and records by the State Fair Employment Practices Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this contract/Agreement.

3. Remedies for Willful Violation:

(a) The **City** may determine a willful violation of the Fair Employment Practices provision to have occurred upon receipt of a final judgment having that effect from a court in an action to which **Consultant** was a part, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the **Consultant** has violated the Fair Employment Practices Act and has issued an order, under Government Code Section 12970, which has become final, or obtained an injunction under Government Code 12973.

(b) For willful violation of this Fair Employment Practices provision, the **City** shall have the right to terminate this contract/Agreement either in whole or in part, and

*See Government Code Sections 12900-12996 and City Code, Chapter 10 for further details.

any loss or damage sustained by the **City** in securing the goods or services hereunder shall be borne and paid for by the **Consultant** and by his surety under the performance bond, if any, and the **City** may deduct from any money due or that thereafter may become due to the **Consultant**, the difference between the price named in the contract/Agreement and the actual cost thereof to the **City**.

Consultant Agreement
[Valley Instrumentation]

**Wastewater Treatment Plant Instrumentation
Program No. 7313**

**Attachment D
Recycled Paper Requirements**

Definitions

Postconsumer Materials means only those paper products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid wastes for the purposes of collection, recycling and disposition.

Recovered Paper Materials means paper waste generated after the completion of a papermaking process, such as postconsumer materials, envelope cuttings, bindery trimmings, printing wrappers, obsolete inventories, and rejected unused stock. Recovered paper material, however, shall not include fibrous wastes generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), or fibrous byproducts of harvesting, extractive or woodcutting processes, or forest residues such as bark.

Minimum Content Standards

The following categories of paper must contain the minimum percentages of material listed under both "Recovered Material" and "Postconsumer Material." The "Postconsumer Material" percentage is included within the total "Recovered Material" percentage. Note: When utilizing a category of paper not listed below, the paper shall contain the highest percentage of recycled paper available.

Paper Category	Minimum Percentage of Recovered Material	Minimum Percentage of Postconsumer Material
High Speed Xerographic	50%	10%
Bond Paper	50%	10%
Cover Paper	50%	10%
Computer Paper (Continuous Form)	--	100%
Envelopes	50%	10%