



AGENDA REPORT

Meeting Date: November 18, 2008
Item Number: F-6
To: Honorable Mayor & City Council
From: Shana Epstein, Environmental Utilities Manager
Subject: AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND ADS CORP TO PROVIDE MAINTENANCE AND REPAIR SERVICES FOR SEWER FLOW MONITORING EQUIPMENT AND MONTHLY WASTEWATER SAMPLING AND DATA ANALYSIS

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council move to approve an agreement with ADS Corp (ADS) to continue providing monitoring services to the Wastewater Utility in the amount not to exceed \$183,903.12 over a three year period.

INTRODUCTION

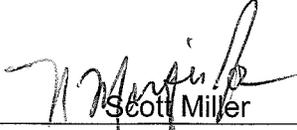
ADS is the company of choice in Los Angeles County to perform wastewater monitoring and data analysis. This agreement will allow ADS to continue to assist the City in compiling the necessary information to ensure that the City is paying for its proportional share of the costs for wastewater treatment to the City of Los Angeles.

DISCUSSION

The City contracts with the City of Los Angeles to treat the City's wastewater at Hyperion Treatment Plant. The City's bill is calculated from quarterly submittals from the City of Los Angeles detailing the City's wastewater flow and strength of biological oxygen demand (BOD) and total suspended solids (TSS). Since 2002, ADS has assisted the City in compiling this information to ensure the City is paying only its proportional share of the costs for treatment at Hyperion. Staff recommends continuing this relationship to ensure quality control and consistency.

FISCAL IMPACT

These funds are available and budgeted for in the Wastewater Enterprise Fund. A purchase order has been issued based upon the previous contract in July 2008 for FY 08/09 work to be performed.



Scott Miller

Finance Approval



David Gustavson

Approved By

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
ADS CORP TO PROVIDE MAINTENANCE AND REPAIR
SERVICES FOR SEWER FLOW MONITORING EQUIPMENT
AND MONTHLY WASTEWATER SAMPLING AND DATA ANALYSIS

NAME OF VENDOR: ADS Corp.

RESPONSIBLE PRINCIPAL OF VENDOR: Joseph J. Goustin, Treasurer &
Chief Financial Officer

VENDOR CONTACT: Paul Forsthoefel

VENDOR'S ADDRESS: 4820 Mercury Street, Suite C
San Diego, CA 92111

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Shana Epstein
Environmental Utilities Manager

COMMENCEMENT DATE: November 1, 2008

TERMINATION DATE: October 31, 2011

CONSIDERATION: Not to exceed \$183,903.12

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
ADS CORP TO PROVIDE MAINTENANCE AND REPAIR
SERVICES FOR SEWER FLOW MONITORING EQUIPMENT
AND MONTHLY WASTEWATER SAMPLING AND DATA ANALYSIS

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "City"), and ADS Corp, (hereinafter called "Contractor").

RECITALS

A. City desires to retain Contractor to provide maintenance and repair services for the sewer flow monitoring equipment or Quadrascan® Flow Meters at the locations listed in Exhibit A, the Schedule of Locations, attached hereto and incorporated herein by this reference and monthly wastewater sampling and data analysis.

B. Contractor represents that it has the qualifications to provide such services and City desires to retain Contractor to perform such services.

NOW, THEREFORE, the parties agree as follows:

Section 1. Scope of Services.

A. Contractor shall satisfactorily perform the services set forth in Exhibit A for the sewer flow monitoring equipment or Quadrascan Flow Meters ("Equipment") at the locations listed in Exhibit A and based on the Maintenance Schedule of Equipment set forth in Exhibit A. City may request that locations be added and City shall compensate Contractor for such additional services at the per unit monthly rate listed in Section 3 of this Agreement.

B. With respect to responses outside the scope of the services described in Exhibit A, City shall compensate Contractor for such additional services as provided in Section 3 of this Agreement.

C. City may request changes to the Maintenance Schedule of Equipment, by providing Contractor thirty (30) days advance written notice of such changes.

D. Contractor shall perform the wastewater sampling and analysis services as described in Exhibit B, attached hereto and incorporated herein by this reference.

Section 2. Time of Performance. Contractor shall perform the services on or by the Termination Date set forth above in accordance with the Schedule set forth in this Agreement.

Section 3. Contractor's Fee.

A. City agrees to pay Contractor for and in consideration of the faithful performance of the services and duties set forth in Subsection 1A and Exhibit A of this Agreement, except the services described in Subsection 1B, and Contractor agrees to accept from City, as and for compensation for the faithful performance of said services and duties at the monthly rate of Seven Hundred Eighty-Nine Dollars and Six Cents (\$789.06) per unit of Equipment at the locations listed in Exhibit A.

B. City shall compensate Contractor additional amounts for responses as defined in Subsection 1B of this Agreement at the rate of Two Hundred Fifty Dollars (\$250) per hour, for a two-person crew.

C. City agrees to pay Contractor for and in consideration of the faithful performance of the services and duties set forth in Exhibit B of this Agreement (Data Analysis and Sampling), and Contractor agrees to accept from City, as and for compensation for the faithful performance of said services and duties, at the monthly rate of One Thousand One Hundred Sixty-Three Dollars and Twelve Cents. (\$1,163.12).

D. In no event shall the total amount paid to Contractor for all services performed pursuant to this Agreement for the period November 1, 2008 through October 31, 2011 exceed One Hundred Eighty-Three Thousand Nine Hundred Three Dollars (\$183,903.12).

E. With respect to compensation under this Agreement which provides for the payment of unit prices, the parties recognize that unit pricing compensation arrangements assume the recovery of certain costs, including but not limited to mobilization and demobilization, over a potentially variable number of units, and City agrees that each percentage reduction in scope will result in a similar increase in unit price plus an additional ten percent (10%).

Section 4. Payment. Contractor shall submit an itemized statement to City for its services it will perform for the prior month, which shall include documentation setting forth in detail a description of the services to be rendered and the hours of service. City shall pay Contractor the amount of such billing within thirty (30) days of receipt of Contractor's invoice.

Section 5. City's Responsibility.

A. City shall provide Contractor with all pertinent data, documents and other requested information as is available for the proper performance of Contractor's services.

B. City shall not make any changes in the Equipment or software that would preclude Contractor from being able to interface via telephone with the Equipment being serviced unless agreed to by prior written agreement between Contractor and City.

C. City shall not attempt to make or make repairs or perform maintenance on the Equipment at the locations listed in Exhibit A unless authorized by Contractor in writing.

D. City shall provide to Contractor access to all the monitoring sites, sufficient area for placement of personnel and equipment, including all rights-of-way and ramp, if required. This includes, but is not limited to, exposing manholes, clearing easements and/or constructing roads or ramps suitable for truck/van, if necessary, and pump station access.

Section 6. Independent Contractor. Contractor is and shall at all times remain, as to City, a wholly independent Contractor. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as herein set forth. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City.

Section 7. Successors and Assigns. Contractor shall not assign or attempt to assign any portion of this Agreement without the written approval of City.

Section 8. Responsible Principal(s).

(a) The Responsible Principal set forth above shall be principally responsible for Contractor's obligations under this Agreement and shall serve as principal liaison between CITY and Contractor. Designation of another Responsible Principal by Contractor shall not be made without the prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 9. Personnel.

A. Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement shall be performed by Contractor, and all personnel engaged in the work shall be qualified to perform such services.

B. Throughout the term of this Agreement, and for one (1) year following its termination or expiration, neither party shall solicit or hire any current or former (within twelve months of termination) personnel of the other party, without the express written consent of the other party.

Section 10. Conflicts of Interest. Contractor agrees not to accept any employment or representation during the term of this Agreement which is or may likely make Contractor "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by City on any matter in connection with which Contractor has been retained pursuant to this Agreement.

Section 11. Insurance.

A. Contractor shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Commercial General Liability Insurance, with minimum limits of One Million Dollars (\$1,000,000) for each occurrence and in the

aggregate, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Contractor.

B. Contractor shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Commercial Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Contractor in performing the services required by this Agreement.

C. Contractor agrees to carry, maintain, and keep, in full force and effect, at all times during the performance of work under this Agreement workers' compensation insurance as required by law.

D. The policy or policies required by this section shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

E. Contractor agrees that if it does not keep the aforesaid insurance in full force and effect City may immediately terminate this Agreement.

F. At all times during the term of this Agreement, Contractor shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, showing that the aforesaid policies are in effect in the required amounts. Contractor shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

G. The insurance provided by Contractor shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

H. Any deductibles or self-insured retentions must be declared to and approved by City prior to the commencement of work under this Agreement. At the option of City, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification. Contractor agrees to indemnify, hold harmless and defend City, City Council and each member thereof, and every officer, employee and agent of City from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor or any person employed by Contractor in the performance of this Agreement.

Section 13. Cancellation of Agreement.

A. Contractor may cancel this Agreement at any time upon five (5) calendar days written notice to City. Contractor agrees to cease all work under this Agreement on or before the effective date of such notice.

B. In the event of termination or cancellation of this Agreement by either party, due to no fault or failure of performance by Contractor, Contractor shall be paid full compensation for all services performed by Contractor, in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, Contractor shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation, provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid to Contractor for the full performance of the services required by this Agreement.

Section 14. Information and Documents. All data, information, documents and drawings prepared for City and required to be furnished to City in connection with this Agreement shall become the property of City, and City may use all or any portion of the work submitted by Contractor and compensated by City pursuant to this Agreement as City deems appropriate.

Section 15. Notice. Any notice required to be given to Contractor shall be deemed duly and properly given upon delivery, if sent to Contractor postage prepaid to the Contractor's address set forth above or personally delivered to Contractor at such address or other address specified to City in writing by Contractor.

Section 16. Fair Employment Practices/Equal Opportunity Acts. In the performance of this Agreement, Contractor shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S.C. §§ 200e-217), whichever is more restrictive.

Section 17. City Representative. The City Manager or his designee shall represent City in the implementation of this Agreement.

Section 18. Attorney's Fees. In the event of litigation between the parties arising out of or connected with this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to any other amounts, reasonable attorney's fees and costs of such litigation.

Section 19. Extent of Agreement. This Agreement represents the entire and integrated agreement of the parties and supersedes any and all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

Section 20. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any

of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

Section 21. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

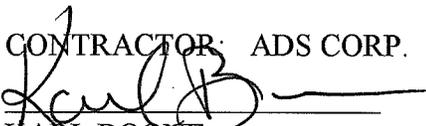
EXECUTED the ____ day of _____, 200 __ at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:

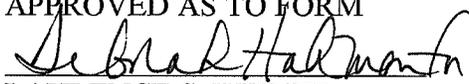
(SEAL)
BYRON POPE
City Clerk

CONTRACTOR: ADS CORP.


KARL BOONE
President



JOSEPH J. GOUSTIN
Treasurer & Chief Financial Officer

APPROVED AS TO FORM


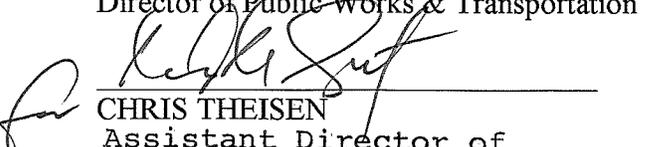
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD, CCM
City Manager



DAVID D. GUSTAVSON
Director of Public Works & Transportation



CHRIS THEISEN
Assistant Director of
Public Works & Transportation



KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF SERVICES
SEWER FLOW MONITORING
EQUIPMENT MAINTENANCE AND REPAIR

A. Contractor shall perform the following services on the Sewer Flow Monitoring equipment ("Equipment") at the following locations:

BC-01 Benedict Canyon at Leona
LC-01 300 Block of La Cienega north of Olympic
WH-018800 West Whitworth west of Robertson
GR-01 8701 Gregory at Hamel and Shenandoah
AZ-01 Gregory at Arnaz and Wooster

1. Remote diagnostic check-out of all Equipment using Contractor's most current procedures and programs from its facilities in San Diego or other service locations, by use of telephone lines.

2. Repair and preventative maintenance services necessary to keep the Equipment operating in accordance with the manufacturer's design specification. These services shall be performed at Contractor's facilities located in San Diego or at other service locations.

3. Mail to City a Statement of Repair Services for services performed or diagnostics run when the service is performed.

4. Once per quarter, on average, conduct a site visit to each location indicated in Exhibit A to perform an in-situ hydraulic confirmation and a physical confirmation of the sensor readings. All such findings shall be reported, in writing, to City.

B. Exclusions The following equipment and services are excluded from the monthly fees set forth in Section 3 (A) and (C) of the Agreement. City shall compensate Contractor for such services requested by City in writing based on the rates set forth in Section 3B of the Agreement.

1. Communication lines external to the Equipment.
2. Changes or alterations in specifications, except those approved in writing by both parties.
3. Painting or refinishing Equipment or furnishing materials therefor.

4. Installation, moving, or removing of Equipment unless required as part of the repair process.
5. Repairs made necessary by negligence of City, its employees, agents, contractors or invitees.
6. Repairs made necessary due to attempts by City to repair or maintain the Equipment unless authorized by Contractor.
7. Maintenance and repairs to Equipment at locations not specifically identified in Exhibit A, except those approved in writing by both parties.

C. Regular Maintenance of Equipment. Regular maintenance of locations BC-01 (Benedict Canyon at Leona), LC-01 (300 block of La Cienega north of Olympic), WH-01 (8800 West Whitworth west of Robertson), GR-01 (8701 Gregory at Hamel & Shenandoah), and AZ-01 (Gregory at Arnaz and Wooster) occurs once per quarter. Quarters begin as follows: January 1, April 1, July 1, and October 1. In each of these quarters a site visit is to be made to each individual site to perform an in-situ hydraulic calibration and a physical confirmation of the sensor readings.

D. Flow Meter Unit Installation. If City requests Contractor to install an additional flow meter unit, then Contractor shall perform the following work:

1. Kick Off Meeting. Contractor shall attend a kick off meeting between City and Contractor staff to discuss project scope, establish lines of communication, verify the flow monitoring site locations, and construct the project schedule.
2. Site Investigations and Verification. Contractor shall mobilize a two-person field crew experienced in flow monitoring to conduct a site investigation. Contractor shall provide standard OSHA required confined space access safety equipment and utilize standard traffic control devices (cones). The proposed flow monitoring locations shall be identified and verified by Contractor for hydraulic suitability. Contractor shall also check for debris in the manhole that could impact data quality and coordinate any required cleaning efforts with City. Contractor crews shall look for evidence and signs of erratic flow patterns.
3. Site Report. Upon completion of the investigations, Contractor's field crew shall complete a Site Report for the monitoring location. The Site Report shall include: a sketch of the general location, physical characteristics and pipe diameter of the proposed monitoring location, manhole depth, flow measurements, and other comments pertinent to the location, such as special traffic or safety issues. The final site locations are subject to City's written approval prior to installation of the flow meter unit equipment.

4. Equipment. Contractor shall provide City with one (1) ADS Model 3601™ flow monitor with standard telephone line installation. Contractor shall also provide three sensors used to calculate flow: a Quadredundant ultrasonic depth sensor; a redundant pressure sensor, which also records depth (during surcharged conditions); and a Doppler velocity sensor. Contractor's proprietary Quadredundant ultrasonic depth sensor can utilize up to 12 individual sensor pairs each time the monitor takes a depth reading. This redundancy both increases sensor accuracy and depth data uptime. The pressure depth sensor, operating independently, utilizes a completely redundant technology to obtain depth information. The velocity sensor transmits and receives ultrasonic signals through a cross-section of wastewater.
5. Installation. Contractor shall install the equipment described in paragraph D(4). A typical installation will include: the ultrasonic depth sensor that will be mounted at the crown of the pipe; a redundant pressure depth sensor mounted in the invert; and a Doppler velocity sensor also mounted in or near the invert. The equipment and sensor cables shall be firmly and neatly secured to the manhole walls and/or steps in order to allow ready access by Contractor's personnel and to minimize chances that debris and/or surcharging would cause the monitor or sensor ring to be washed down the line.
6. Monitor Activation and Confirmation. Monitor activation will take place following installation. Contractor's field crews shall take manual depth and velocity readings in order to confirm the monitor is collecting accurate data. Contractor's field crew shall also take manual readings of the cross-section of flow in order to determine the pipe's hydraulic profile.
7. Exclusions: The following services are excluded with respect to the installation of the Flow Meter Unit:
 - Civil Engineer's Stamp on any plans submitted for permitting (\$500 cost per site if required).
 - Pavement repairs other than butt pave trench width only.
 - Work conducted outside of normal work hours during the week.

EXHIBIT B

SCOPE OF SERVICES WASTEWATER MONITORING DATA ANALYSIS, REPORTING AND SAMPLING

Contractor shall perform the following wastewater monitoring, data analysis, reporting and sampling services:

1. Data Collection. On a weekly basis Contractor shall provide remote wastewater flow data collections.
2. Data Editing and Analysis. A trained data analyst shall perform a review of the collected data on a weekly basis and compile the data monthly for characteristic changes in the wastewater flow.
3. Data Reporting. The wastewater data shall be reported to City on a monthly basis and shall include the following:
 - Monthly Sampling and Quantification Summary Sheet
 - Chain of Custody
 - Laboratory Results
 - Monthly Hydrographs and Tabular Reports with Final Quantities at 15-minute increments
 - Deliver electronic flow data to Augustine Nnuro at the City of Los Angeles
4. Wastewater Sampling. Provide wastewater sampling services for locations GR-01, WH-01, LC-01 and BC-01 identified on Exhibit A. Contractor shall provide sampling services consisting of one composite sample per month at the locations listed in this paragraph. The samples shall be flow proportioned and will be collected over a 24-hour period of time. The samples shall be analyzed by a laboratory that has been certified as an environmental testing laboratory pursuant to the provisions of the California Environmental Laboratory Improvement Act of 1988 (Health and Safety Code, Division 1, Part 2, Chapter 7.5, commencing with Section 100825. The sampling data shall be reported to City by Contractor on a monthly basis.



CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	<u>LIMITS</u> P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
Authorized Insurance Representative

AGENCY: _____

TITLE: _____
 ADDRESS _____
 : _____

RM02.DOC REVISED 10/14/96.

EXHIBIT C