



AGENDA REPORT

Meeting Date: April 22, 2010
Item Number: G-9
To: Honorable Mayor & City Council
From: Ara Maloyan, Deputy City Engineer
Samer Elayyan, Civil Engineer *SE*
Subject: APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND BEHRENS AND ASSOCIATES, INC., TO PROVIDE CONSTRUCTION NOISE MONITORING SERVICES DURING THE REPLACEMENT OF WATER RESERVOIR TANKS 3A, 4B, 5, 6 AND 7; AND

APPROVAL OF A PURCHASE ORDER IN THE AMOUNT OF \$128,100 TO BEHRENS AND ASSOCIATES

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council move to approve an "Agreement Between the City of Beverly Hills and Behrens and Associates to Provide Construction Noise Monitoring Services During the Replacement of Water Reservoir Tanks 3A, 4B, 5, 6, and 7" and approve the issuance of a purchase order to Behrens and Associates in the amount of \$128,100.

INTRODUCTION

This report is a request for City Council approval of a construction noise monitoring services agreement with Behrens and Associates during the replacement of five water reservoir tanks within the City of Beverly Hills.

DISCUSSION

The City of Beverly Hills potable water distribution system inventory consists of five flat bottom, ground supported circular steel water reservoir tanks, all located at five separate sites (3A, 4B, 5, 6, and 7). These tanks were constructed from the mid-fifties to the mid-sixties and do not meet the current industry standards for "Welded Steel Tanks for Water Storage."

The existing tanks, which are an integral part of the City's water distribution system, need to be replaced to meet current California Department of Public Health (CDPH) drinking water standards, seismic design standards, and Cal OSHA safety standards.

In October 2009, Final Design Plans and specifications for the replacement of these five water reservoirs, replacement of on-site piping at sites 3A, 4B, 5, 6, and 7, and seismic retrofitting of the associated pump stations were prepared by Montgomery Watson Harza (MWH). Consequently, these bid documents were provided to four prequalified contractors to bid on this project. Bids were opened on Jan 12, 2010, and a construction contract was awarded to Pacific Tank and Construction, Inc. at the February 2, 2010 City Council meeting. A Notice to Proceed (NTP) was issued to Pacific Tank and Construction, Inc., on March 3, 2010, and the replacement work for the steel tanks will be sequential over a 30-month period (not concurrent), with a completion date of September 7, 2012.

Between November 2009, and January 2010, the City requested proposals from the following three companies to provide construction noise monitoring services during the replacement of these five new water reservoir tanks, on-site piping, and seismic retrofit of the booster pump stations at sites 3A, 4B, 5, 6, and 7:

- 1) Behrens and Associates, Inc.
- 2) Eliar Associates, Inc.
- 3) Veneklasen Associates

Proposals were received from all three companies and subsequently reviewed and evaluated by staff based on the Qualifications-Based Selection (QBS) process established by the United States Congress as a part of the Brooks Act (Public Law 92-582) and further developed as a process for public agencies to use for the selection of architectural and engineering services for public construction projects. It is a competitive contract procurement process; whereby, consulting firms submit qualifications to a procuring entity (owner) who evaluates and selects the most qualified firm, and then negotiates the project scope of work, schedule, budget, and consultant fee. Under a QBS procurement, the cost of the work (price) is not considered when making the initial selection of the best or most appropriate provider of the professional services required.

The evaluation process resulted in interviewing Behrens and Associates, Inc. on March 17, 2010.

Based on the above-mentioned selection criteria, the interview, the experience in providing construction noise monitoring services for similar projects, the location of the consultant (City of Hawthorne) and his proximity to the City of Beverly Hills, and the references (City of Los Angeles, Cuesta Construction Company, and HDD Company) contacted, staff concurs in their selection of Behrens and Associates, Inc. to provide the

requested construction noise monitoring services during construction of the five new reservoirs.

Staff recommends approval of an agreement with Behrens and Associates for construction noise monitoring services during the replacement of the five water reservoir tanks. This amount is based on continuous (24hours/day) construction noise monitoring, and weekly reporting using three monitoring stations at each site for the entire duration of the project (30 months). This fee also includes a maximum of 2 hours/week for an acoustical engineer to provide computer noise impact modeling and noise complaint or exceedence level response (if needed).

FISCAL IMPACT

Funds for this project are part of the initial CIP project budget and provided as follows:

DEPT	FUND	PROJECT NUMBER	SUB-PROJECT NUMBER	FUNDING SOURCE	AMOUNT
35	80	0796	35-80-0796-85040	Water Enterprise Fund	\$ 128,100.00



Scott Miller
Finance Approval


for David Gustavson

Approved By

Attachment 1

Agreement

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
BEHRENS AND ASSOCIATES, INC. TO PROVIDE CONSTRUCTION
NOISE MONITORING SERVICES DURING THE REPLACEMENT OF
WATER RESERVOIRS 3A, 4B, 5, 6 AND 7

NAME OF CONSULTANT: Behrens and Associates, Inc.

RESPONSIBLE PRINCIPAL OF CONSULTANT: Donald Behrens, President

CONSULTANT'S ADDRESS: 13806 Inglewood Avenue
Hawthorne, California 90250
Attention: Donald Behrens, President

CITY'S ADDRESS: City of Beverly Hills
345 N. Foothill Road
Beverly Hills, CA 90210
Attention: Samer Elayyan, Civil Engineer

COMMENCEMENT DATE: April 23, 2010

TERMINATION DATE: Upon the satisfactory completion of services required
under this Agreement

CONSIDERATION: Not to exceed \$ 128,100.00

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND BEHRENS AND ASSOCIATES, INC. TO PROVIDE CONSTRUCTION NOISE MONITORING SERVICES DURING THE REPLACEMENT OF WATER RESERVOIRS 3A, 4B, 5, 6 AND 7

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and Behrens and Associates, Inc. (hereinafter called "CONSULTANT"), a California corporation.

RECITALS

A. CITY desires to have certain services and/or goods provided as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein.

B. CONSULTANT represents that it is qualified and able to perform the Scope of Works.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Scope of Work. CONSULTANT shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. City shall have the right to order, in writing, changes in the Scope of Work. Any changes in the Scope of Work by CONSULTANT must be made in writing and approved by both parties. The cost of any change in the Scope of Work must be agreed to by both parties in writing.

Section 2. Time of Performance. CONSULTANT shall commence its services under this Agreement upon receipt of a written notice to proceed from CITY. CONSULTANT shall complete the performance of services by the Termination Date set forth above and/or in conformance with the project timeline established by the City Manager or his designee.

Section 3. Compensation.

(a) Compensation. CITY agrees to compensate CONSULTANT for the services and/or goods provides under this Agreement, and CONSULTANT agrees to accept in full satisfaction for such services, a sum not to exceed the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein, based on the hourly rates set forth in Exhibit B.

(b) Expenses. The amount set forth in paragraph (a) of this section shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement (including, but not limited to, all labor, materials, delivery, tax, assembly, and installation, as applicable). There shall be no claims for additional compensation for reimbursable expenses.

(c) Additional Services. City may from time to time require CONSULTANT to perform additional services not included in the Scope of Services. Such requests for additional services shall be made by City in writing and agreed upon by both parties in writing.

Section 4. Method of Payment. Unless otherwise provided for herein, CONSULTANT shall submit to City a detailed invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within 30 days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall pay CONSULTANT said Consideration in accordance with the schedule of payment set forth in Exhibit B, attached hereto and incorporated herein.

Section 5. Independent Contractor. CONSULTANT 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 CONSULTANT or any of CONSULTANT's employees, except as herein set forth. CONSULTANT 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 6. Assignment. This Agreement shall not be assigned in whole or in part, by CONSULTANT without the prior written approval of CITY. Any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s).

(a) CONSULTANT's Responsible Principal set forth above shall be principally responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible by CONSULTANT shall not be made without 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 8. Personnel. CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Permits and Licenses. CONSULTANT shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of CONSULTANT. CONSULTANT affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

Section 11. Insurance.

(a) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(i) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(ii) A policy or policies of Comprehensive 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 CONSULTANT in performing the Scope of Work required by this Agreement.

(iii) Workers' compensation insurance as required by the State of California.

(iv) Professional Liability Insurance. A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of One Million Dollars (\$1,000,000) per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by CITY. Further, CONSULTANT agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(b) CONSULTANT shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement 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.

(d) CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

(e) At all times during the term of this Agreement, CONSULTANT shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONSULTANT shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general and auto liability insurance shall contain an endorsement naming the 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.

(f) The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(g) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification. CONSULTANT 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 CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 13. Termination.

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to CONSULTANT. CONSULTANT 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 CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement. CONSULTANT shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 14. CITY's Responsibility. CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT's Scope of Work.

Section 15. 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 CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Changes in the Scope of Work. The CITY shall have the right to order, in writing, changes in the scope of work or the services to be performed. Any changes in the scope of work requested by CONSULTANT must be made in writing and approved by both parties.

Section 17. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 18. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 19. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations,

representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

Section 20. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

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

Section 22. City Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

Section 23. 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.

EXECUTED the ____ day of _____ 20__, at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

ATTEST:

BYRON POPE
City Clerk

CONSULTANT:
BEHRENS AND ASSOCIATES, INC.

DONALD BEHRENS
President

MELANIE BEHRENS
Secretary

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager



DAVID D. GUSTAVSON
Director of Public Works & Transportation



KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF WORK

CONSULTANT shall perform the following services:

Provide construction sound level monitoring services during the replacement of five existing CITY-owned above-ground welded steel tanks in Beverly Hills, CA. The sound level monitoring services shall include deployment of sound monitoring stations, calibration and maintenance of sound level meters and ancillary equipment, sound level measurement and logging, and weekly reports of measured sound levels. The weekly reports shall be sent to CITY electronically, as directed by CITY and in the form consistent with Attachment 1 to Exhibit A., attached hereto and incorporated herein by this reference. The Scope of Work shall also include noise or vibration complaint or exceedance level response provided on an "as requested" basis and computer noise impact modeling, noise mitigation design and implementation.

The tanks are scheduled to be replaced one at a time with an estimated six months construction time per tank. CONSULTANT shall deploy three sound level monitoring stations during the replacement of the first tank to assess the noise impact of the construction activities on the adjacent surroundings. A determination of the number of monitoring stations for the next tank replacement site will be made based on the location of sensitive noise receptors relative to the site and the measured construction sound levels from the first tank replacement. CITY shall be advised of the number of monitoring stations for each tank once determined. The maximum number of monitors to be installed shall not exceed three.

ATTACHMENT 1 TO EXHIBIT A
FORM OF WEEKLY REPORT TO CITY

March 13, 2010

City of Beverly Hills
345 Foothill Road
Beverly Hills, CA 90210

Attention: Samer Elayyan, Civil Engineer
Subject: Steel Tank Replacement Sound Level Monitoring
Reference: March 6 to March 12, 2010

Dear Mr. Elayyan,

Please find the attached results of the construction sound level monitoring for Tank 5, on Trousdale Place from March 6 to 12, 2010. Continuous sound monitoring instrumentation systems were positioned at the locations shown in Attachment 1.

The continuous sound levels at both locations were measured with two (2), Bruel & Kjaer Type 1, Model 2250 Sound Level Analyzers which are equipped with self contained power systems. The sound level meters were programmed to continuously measure and calculate hourly average (Leq) and maximum (Lmax) sound levels and were calibrated prior to deployment.

The measured hourly average and maximum sound levels at the two locations are shown in the following graphs along with the County of Los Angeles construction noise standards for single-family residential properties. The noisy activities during the week were the demolition of the concrete tank base using a hoe ram and delivery of materials to the site.

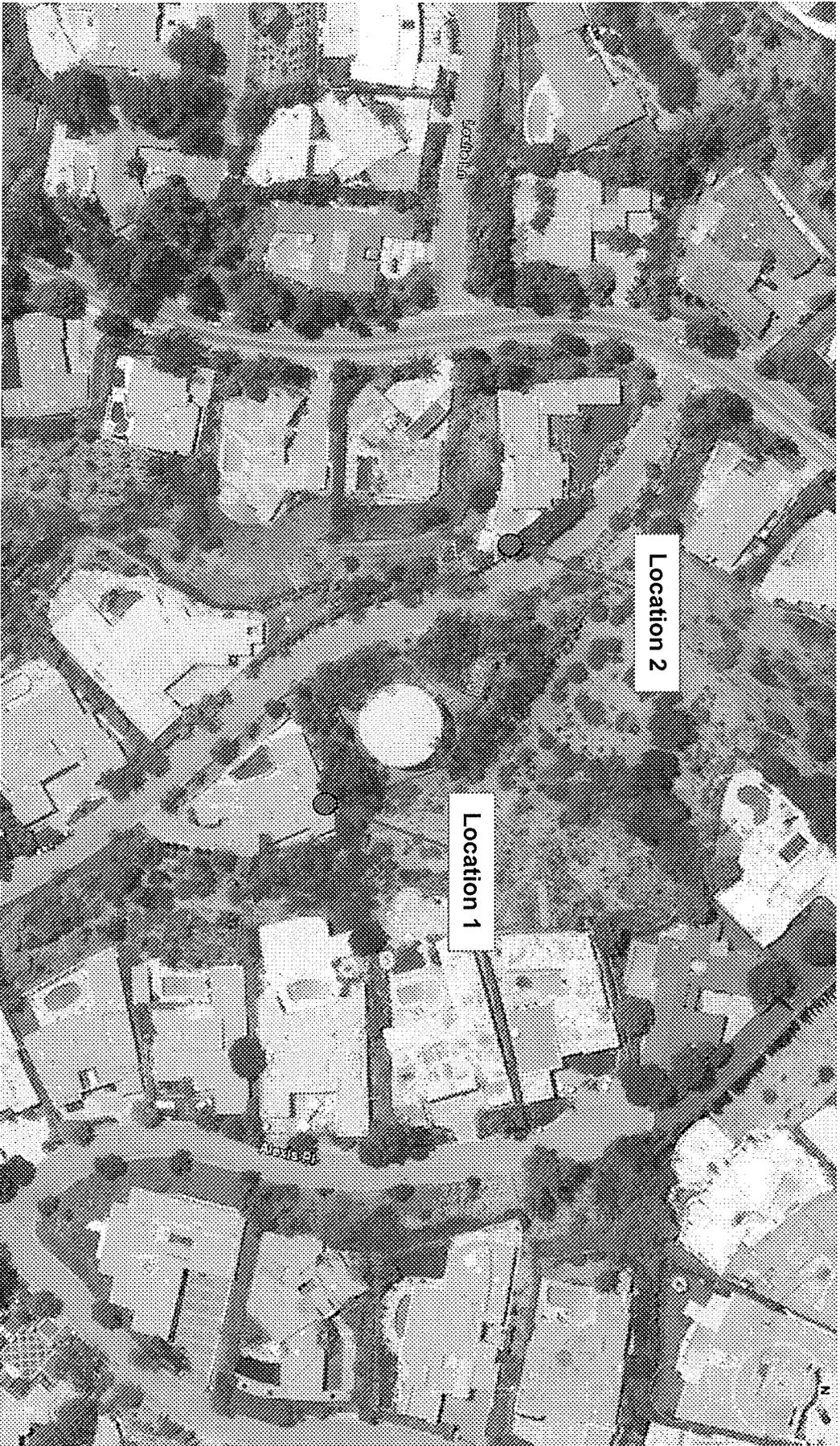
The County of Los Angeles noise standards were exceeded at Location 1 between 9 am and 2 pm on March 8, and between 12 pm and 2 pm on March 10. The noise standards were not exceeded at Location 2.

Very truly yours,



Don Behrens

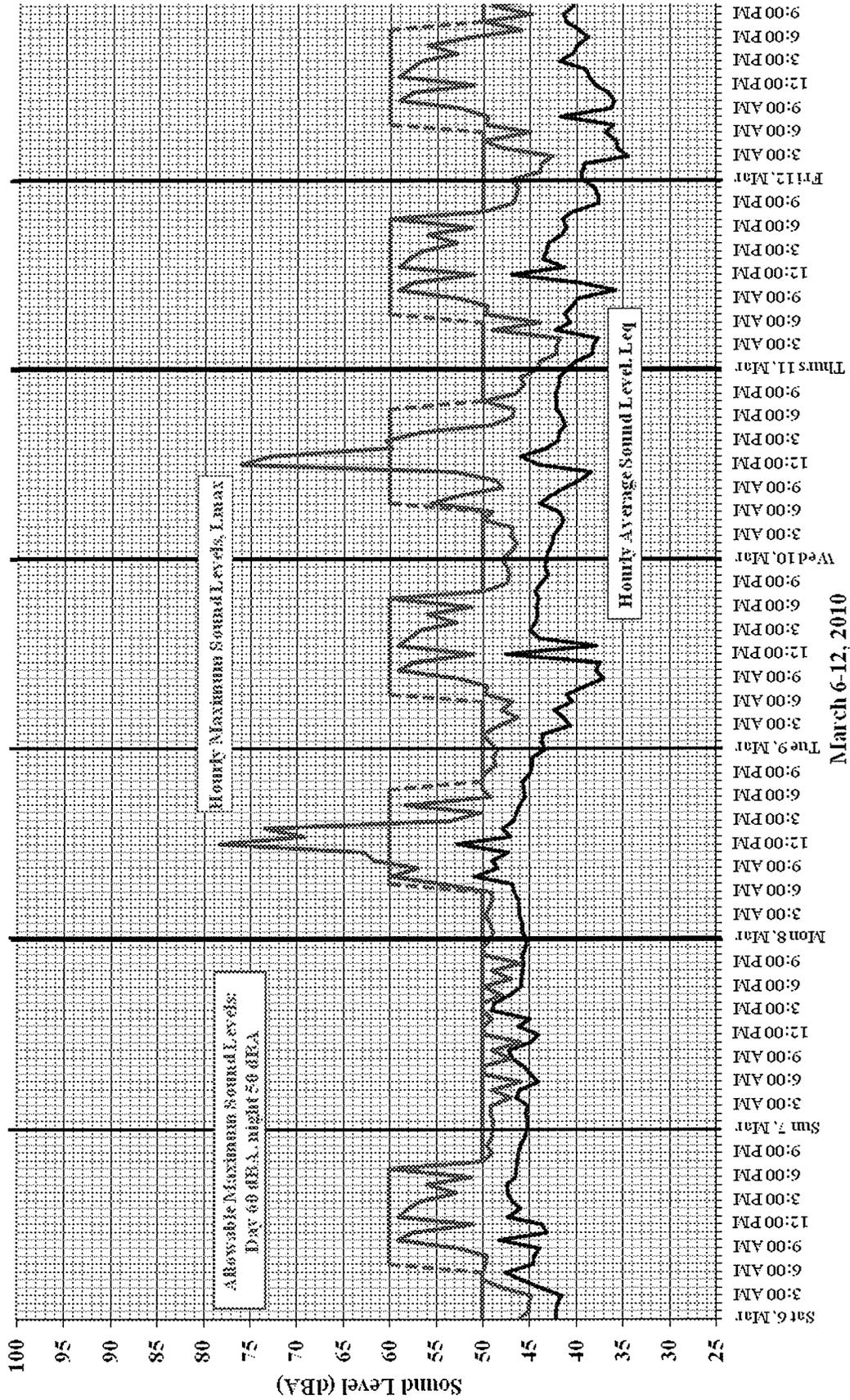
Attachments:



Attachment 1
Noise Monitoring Locations

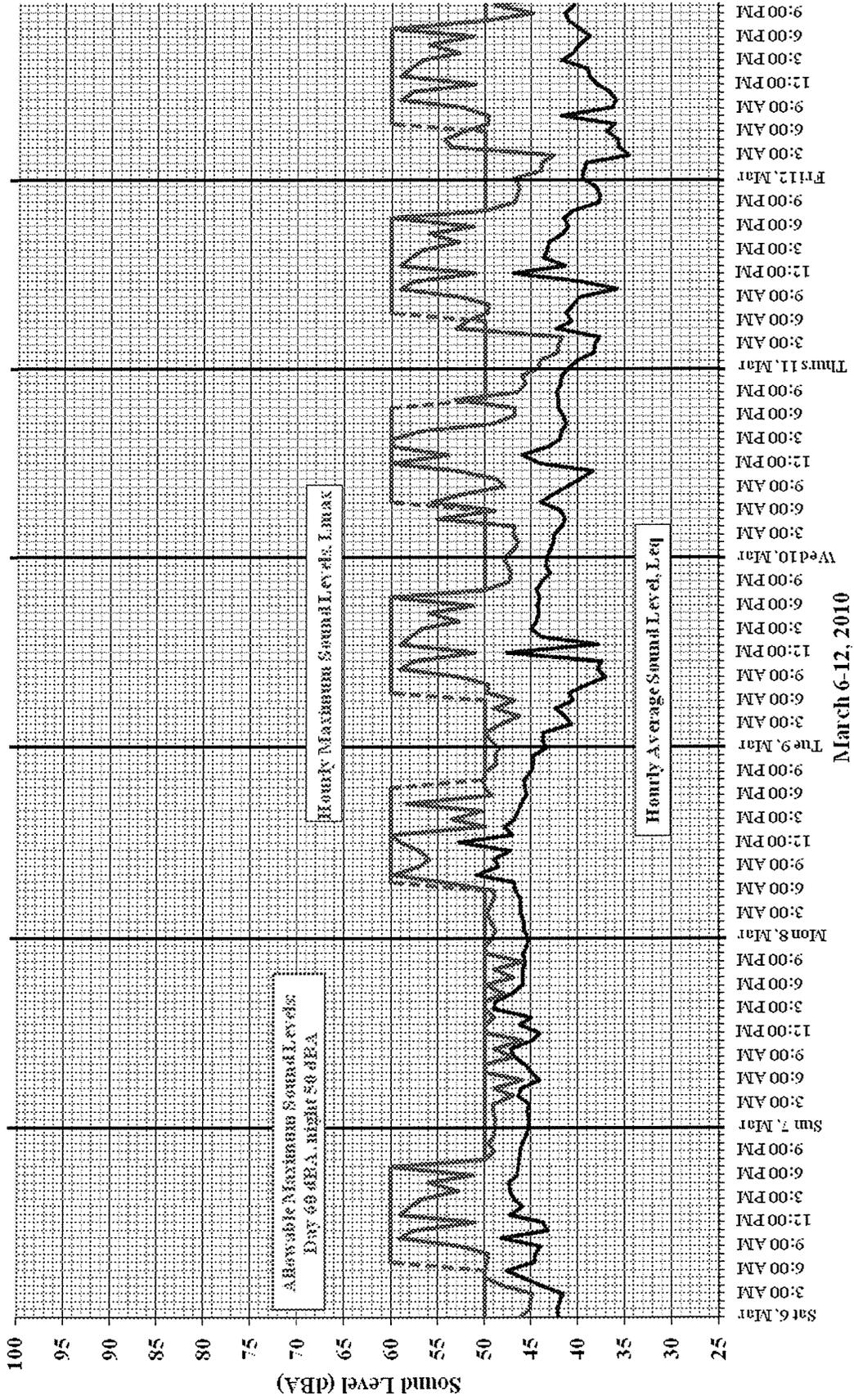
City of Beverly Hills
 Tank 5, Location 1

Continuous Sound Level Monitoring



Attachment 2

City of Beverly Hills
 Tank 5, Location 2
 Continuous Sound Level Monitoring



March 6-12, 2010

Attachment 3

EXHIBIT B

SCHEDULE OF PAYMENT AND RATES

The following cost proposal provides the price of the proposed sound level monitoring services on a monthly basis. The final costs depend on the length of time and number of monitoring stations deployed.

In no event shall CITY pay CONSULTANT for the satisfactory performance of the services set forth in this Agreement an amount that exceeds One Hundred Twenty-Eight Thousand One Hundred Dollars (\$128,100) based on the rates set forth in this Exhibit B.

TABLE 1 – BREAKDOWN OF ESTIMATED FEE

Task Description	Quantities and Fees				
Deployment of 3 sound level monitoring stations at each site (total 5 sites)	15	stations	@	\$500.00 /station	\$7,500.00
Continuous sound level measurement and data logging including data download and weekly measured sound level reports for three monitoring stations	30	months	@	\$3,000.00 / month	\$90,000.00
Computer Noise Impact modeling	120	hours	@	\$125.00 /hour	\$15,000.00
Noise complaint or exceedence level response	120	hours	@	\$130.00 /hour	\$15,600.00
TOTAL ESTIMATED FEE					\$128,100.00

Additional Services

Rates

- | | |
|--|--|
| 1.) Sound level monitor with frequency or audio recording capabilities for detailed analysis of noise sources. | Additional \$250.00 per monitor per month |
| 2.) Analysis of audio and frequency data provided on an “as requested” basis per our standard fee sheet (copy attached). Additional \$5.00 per hour charge above fee sheet rate when site visit is required. | \$130.00 per hour |
| 3.) Ground-borne vibration monitoring, including measurement, analysis and reporting of peak particle velocities produced by construction equipment. Additional \$5.00 per hour charge above fee sheet rate when site visit is required. | \$130.00 per monitor per hour |
| 4.) Construction noise mitigation system design and implementation. | Written quote to be provided on a project by project basis. |

Hourly Rates

Acoustical, Noise, Vibration Services, Project Management	\$185.00
Staff Acoustical Engineering	\$125.00
Forensic/Expert Witness	\$250.00
Noise or vibration complaint or exceedance level response provided on an "as requested" basis	\$130.00
Computer noise impact modeling, noise mitigation design and implementation	\$125.00

Payment Schedule

CONSULTANT shall submit an itemized statement to CITY for its services performed in the prior month, which shall include documentation setting forth in detail a description of the services rendered. CITY shall pay CONSULTANT the undisputed amount of such billing within thirty (30) days of receipt of same.