CityofRedmond
WASHINGTON

AM NO. 12-048 (C5)

MEMO TO: City Council

FROM: John Marchione, Mayor

DATE: March 20, 2012

SUBJECT: **APPROVAL OF CONSULTANT AGREEMENT FOR ON-CALL SERVICES FOR DEVELOPING WATER AND WASTEWATER ELECTRONIC OPERATION AND MAINTENANCE MANUALS**

I. RECOMMENDED ACTION:

Approve a Consultant Agreement for On-Call Services for developing Water and Wastewater Electronic Operation and Maintenance Manuals with BHC Consultants, LLC for up to $100,000 per year (not to exceed $300,000 over 3 years), and authorize the Mayor to sign the agreement.

II. DEPARTMENT CONTACT PERSONS:

Bill Campbell, Director of Public Works	425-556-2733
Ron Grant, Assistant Public Works Director/City Engineer	425-556-2742
Jeff Thompson, Utility Engineer	425-556-2884

III. DESCRIPTION:

The consultant agreement will provide on-call services for developing Water and Wastewater Electronic Operation and Maintenance (EO&M) Manuals for new or refurbished water and wastewater facilities. The Consultant will provide specialized services of developing web-based EO&M Manuals for each new or refurbished water or wastewater facility constructed. The agreement is for a period of approximately 2+ years (thorough 2014), with the option to extend them for an additional two years based on consultant performance.

The on-call agreement will ensure that each water and wastewater construction project will have a consistent EO&M Manual independent of which consultant provides the design services for each construction project. BHC Consultants has already provided a

City-wide update to the EO&M Manuals to make them all similar in look, informational content, and operation. The EO&M Manuals are used by both Utility Engineering staff and City Maintenance staff to find information, troubleshoot problems, and assist in operation of the City's water and wastewater facilities.

The agreement includes a general scope of work that describes the type of service needed under this contract. The specific work performed under this agreement will be authorized by task order. Each task order will include a specific scope of work, schedule, completion date, and budget for the services required.

BHC Consultants has been selected for this on-call contract due to their involvement in developing all of the City's recent Water and Wastewater EO&M Manuals.

IV. IMPACT:

A. Service/Delivery: The on-call contract will provide consistent EO&M Manuals for each new or refurbished Water and Wastewater facility constructed.

B. Fiscal: Staff anticipates spending less than $100,000 per year for the services provided under these contracts ($300,000 over 3 years).

Funding:
Water and Wastewater CIP

Each EO&M Manual will be included in the project budget for the capital improvement project associated with it.

V. ALTERNATIVES:

The City Council may choose not to approve the consultant agreement; however, this action would adversely affect the City's ability to provide complete and consistent Water and Wastewater Facility Operational and Maintenance information used by both Utility Engineering staff and City Maintenance staff.

VI. TIME CONSTRAINTS:

There is an immediate need to develop an EO&M Manual for the Reservoir Park Project just completed. Furthermore, there are five (5) wastewater pump stations identified to be improved or replaced over the next three (3) years. Each of these pump stations will need to have an EO&M Manual developed.

VII. LIST OF ATTACHMENTS:

A. Consultant Agreement

William J. Campbell, Director of Public Works — Date: 3/13/12

Approved for Council Agenda — John Marchione, Mayor — Date: 3/15/12

ATTACHMENT A **CONSULTANT AGREEMENT**	
PROJECT TITLE Electronic Operation and Maintenance Manual On-Call Services	WORK DESCRIPTION Develop Electronic Operation and Maintenace Manuals for Water and Wastewater construction projects.
PROJECT NO. *VARIOUS*	
REDMOND BUSINESS LICENSE NO. RED00019151	CONSULTANT/ADDRESS/TELEPHONE BHC Consultants, LLC 1601 Fifth Avenue, Suite 500 Seattle, WA 98101 206-505-3400
FEDERAL I.D. NO. 20-4324114	
MAXIMUM AMOUNT PAYABLE $300,000.00	COMPLETION DATE December 31, 2014

Index of Exhibits

Exhibit "A" – Scope of Work
Exhibit "B" – Payment (Negotiated Hourly Rate)
Exhibit "C" – Consultant Fee Determination
Exhibit "D" – Subcontracted Work/Fee Determination
Exhibit "E" – Title VI Assurances

THIS AGREEMENT, made and entered into this _____ day of _____, 2012, between the City of Redmond, Washington, hereinafter called the "CITY", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the CITY desires to accomplish the above referenced project; and

WHEREAS, the CITY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a consultant to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the CITY.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I
GENERAL DESCRIPTION OF WORK

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

II
SCOPE OF WORK

The Scope of Work and project level of effort for this project is detailed in Exhibit "A" attached hereto, and by this reference made a part of this AGREEMENT.

III
GENERAL REQUIREMENTS

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the CITY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the CITY. The CONSULTANT shall attend coordination, progress and presentation meetings with the CITY or such Federal, Community, State, City or County officials, groups or individuals as may be requested by the CITY. The CITY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation.

The CONSULTANT shall prepare a monthly progress report, in a form approved by the CITY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

All reports, plans & specifications, and other data furnished to the CONSULTANT by the CITY shall be returned. All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the CITY. Reuse by the CITY or by others acting through or on behalf of the CITY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

IV
TIME FOR BEGINNING AND COMPLETION

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the CITY. All work under this AGREEMENT shall be completed by the date shown in the AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays beyond the control of the CONSULTANT.

V
PAYMENT PROVISIONS

The CONSULTANT shall be paid by the CITY for completed work and services rendered under this AGREEMENT as provided in Exhibit "B" attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

VI
SUBCONTRACTING

The CITY permits subcontracts for those items of work as shown in Exhibit "D" attached hereto and by this reference made a part of this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown in Exhibit "D".

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the CITY.

All reimbursable hourly rates and direct non-salary costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts shall contain all applicable provisions of this AGREEMENT.

With respect to subconsultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the CITY. No permission for subcontracting shall create, between the CITY and subcontractor, any contract or any other relationship.

VII
EMPLOYMENT

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the CITY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the CITY, and any and all claims that may or might arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the CITY, except regularly retired employees, without written consent of the public employer of such person.

VIII
NONDISCRIMINATION

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975
(42 USC Chapter 76 Section 6101 et. seq.)

Civil Rights Restoration Act of 1987
(Public Law 100-259)

American with Disabilities Act of 1990
(42 USC Chapter 126 section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "E" attached hereto and by this reference made a part of this AGREEMENT, and shall include the attached Exhibit "E" in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX
TERMINATION OF AGREEMENT

The right is reserved by the CITY to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the CITY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of the AGREEMENT plus any direct nonsalary costs incurred at the time of termination of the AGREEMENT.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the CITY for any excess paid.

If the services of the CONSULTANT are terminated by the CITY for default on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the CITY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the CITY at the time of termination; the cost to the CITY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the CITY of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the CITY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of the AGREEMENT, if requested to

do so by the CITY. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the CITY, if the CITY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the CITY's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the CITY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X
CHANGES OF WORK

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein when required to do so by the CITY, without additional compensation thereof. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI
DISPUTES

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the CITY shall be referred for determination to the Director of Public Works or City Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or City Engineer's decision, that decision shall be subject to de novo judicial review.

XII
VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in King County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in King County.

XIII
LEGAL RELATIONS

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accord with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the CITY and their officers and employees harmless from and shall process and defend at its own expense all claims, demands or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the CITY against and hold harmless the CITY from claims, demands or suits based solely upon the conduct of the CITY, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the CITY, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the CITY of defending such claims and suits, etc. shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the CITY shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the CITY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the CITY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

A. Worker's compensation and employer's liability insurance as required by the State of Washington.
B. Commercial general liability and property damage insurance in an amount not less than one million dollars ($1,000,000) per occurrence/two million dollars ($2,000,000) aggregate for bodily injury, including death and property damage.
C. Professional liability insurance in the amount of $1,000,000 or more against claims arising from the performance of professional services under this contract.
D. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar ($1,000,000) combined single limit.

Excepting the Worker's Compensation and Professional Liability insurance secured by the CONSULTANT, the CITY will be named on all policies as an additional insured. The CONSULTANT shall furnish the CITY with verification of insurance and endorsements required by the AGREEMENT. The CITY reserves the right to require complete, certified copies of all required insurance policies at any time.

The additional insured endorsement shall provide that to the extent of the CONSULTANT's negligence, the CONSULTANT's insurance shall be primary and non-contributing as to the CITY, and any other insurance maintained by the City shall be excess and not contributing insurance with respect to the CONSULTANT's insurance.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to the CITY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the CITY.

The CITY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the CITY may take such other action as is available to them under other provisions of this AGREEMENT, or otherwise in law.

XIV
EXTRA WORK

The CITY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.

If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.

The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a claim submitted before final payment of the AGREEMENT.

Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

Notwithstanding the terms and conditions of the first two paragraphs above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XV
ENDORSEMENT OF PLANS

If applicable; the CONSULTANT shall place its endorsement on all plans, estimates or any other engineering data furnished by them.

XVI
COMPLETE AGREEMENT

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XVII
EXECUTION AND ACCEPTANCE

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

CONSULTANT

By: _____

Title: _____

CITY OF REDMOND

By: _____
John Marchione, Mayor

ATTEST:_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

SCOPE OF WORK

City of Redmond On-Call Services for Developing Electronic Operation and Maintenance Manuals for New and Refurbished Water and Wastewater Facilities

A. DESCRIPTION

This agreement is a non-exclusive continuing services contract to provide on-call services for Electronic Operation and Maintenance Manuals for City of Redmond Water and Wastewater Facilities. The Consultant will develop web-based Electronic Oepration and Maintenance Manuals for new and refurbished City of Redmond Water and Wastewater facilities.

This Consultant Agreement shall remain in effect until December 31, 2014. Any work authorized by task order before December 31, 2014 may continue until the completion date designated in the task order, but in no event shall continue beyond December 31, 2015. At the City of Redmond's option, this contract may be extended for an additional two year term based on the Consultant's performance.

The maximum amount payable under this Agreement shall not exceed the amount shown on the first page. The City does not guarantee that the consultant will receive a specific volume of work or total contract amount. At the City's option, the maximum amount payable may be increased by a Supplemental Agreement.

Work performed under this Agreement will be authorized by Task Order. Each task order will provide a specific scope of services, schedule, completion date, and budget for the services required. Task orders shall be approved and signed by the City's Utility Engineering Manager or his designee prior to beginning work.

B. GENERAL SCOPE OF SERVICES.

General

- Develop Facility Operation and Maintenance Manual for each facility.
- Develop an Electronic Operation and Maintenance Manual for each facility.

C. DOCUMENTS TO BE FURNISHED BY THE CONSULTANT

The following documents, exhibits or other work products covered by this Agreement shall be furnished by the CONSULTANT to the CITY upon completion of the various phases of the work:

> One copy of the Facility Operation and Maintenance Manual for each facility and one digital copy of the Electronic Operational and Maintenance Manual for each facility. A specific list of documents for each project will be included in each Task Order.

D. ITEMS AND SERVICES TO BE FURNISHED TO THE CONSULTANT BY THE CITY

The CITY will furnish the CONSULTANT copies of the plans, specifications, Contractor supplied equipment operation and maintenance manuals, and other documents available to the CITY that will facilitate the assigned work. A specific list of documents for each project will be included in each Task Order.

EXHIBIT B

PAYMENT
(NEGOTIATED HOURLY RATE)

The CONSULTANT shall be paid by the CITY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR Part 31.

1. **Hourly Rates**

   The CONSULTANT shall be paid by the CITY for work done, based upon the negotiated hourly rates shown in Exhibit "C" attached hereto and by this reference made part of the AGREEMENT. The rates listed shall be applicable for the first 12-month period and shall be subject to negotiation for the following 12-month period upon request of the CONSULTANT or the CITY. If negotiations are not conducted for the second or subsequent 12-month periods within 90 days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the CITY shall be utilized. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

2. **Direct Non-Salary Costs**

   Direct Non-Salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the CITY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the CITY's Travel Rules and Procedures. However, air, train, and rental car costs shall be reimbursed in accordance with the 48 CFR Part 31.205-46 "Travel Costs". The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the CITY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

3. **Contingencies**

   If the CITY desires the CONSULTANT to perform additional work beyond that already defined in the AGREEMENT, the Agreement Administrator may authorize additional funds for this purpose. Such authorization(s) shall be in writing and shall not exceed the amount shown in Exhibit "C". Any changes requiring additional costs in excess of the contingencies shall be made in accordance with Section XIV, "Extra Work".

4. **Maximum Amount Payable**

   The maximum amount payable by the CITY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable is comprised of the total amount authorized and the contingencies. The maximum amount payable does not include payment for extra work as stipulated in Section XIV, "Extra Work". No minimum amount payable is guaranteed under this AGREEMENT.

5. **Monthly Progress Payments**

Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct nonsalary expenses. To provide a means of verifying the invoiced salary costs for the consultant's employees, the agency may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the project at the time of the interview.

6. ***Final Payment***

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the CITY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the CITY unless such claims are specifically reserved in writing and transmitted to the CITY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the CITY may have against the CONSULTANT or to any remedies the CITY may pursue with respect to such claims.

The payment of any billing will not constitute agreements as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the CITY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the CITY of overpayment.

7. **Inspection of Cost Records**

The CONSULTANT and their subconsultants shall keep available for inspection by representatives of the CITY, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

EXHIBIT C - CONSULTANT FEE DETERMINATION

Project Name:	Electronic O&M Manual: On-Call Services
Project Number:	
Consultant:	BHC Consultants
Prepared By:	R.Dorn
Maximum Hourly Rate:	205
Target Average Rate:	

Negotiated Hourly Rates

Discipline, Title, or Name		Direct Salary Cost (DSC)	Computed Hourly Rate	Negotiated Hourly Rate
Project Manager (Ron Dorn)		63.15	194.98	$195
Project Engineer (Adam Schuyler)		54.16	167.22	$167
Staff Engineer (Noah Allen)		34.99	108.03	$108
CAD Support (Patti Simon)		42.13	130.08	$130
Clerical Support (Melanie Robinson)		24.48	75.58	$76

Average Hourly Rate Computation

Total Labor Cost	
Total Labor Hours	
Average Hourly Rate	

EXHIBIT D

SUBCONTRACTED WORK

Subcontracted work will be identified and authorized on individual Task Orders as required.

EXHIBIT E

TITLE VI ASSURANCES

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

1. COMPLIANCE WITH REGULATIONS: The CONSULTANT shall comply with the Regulations relative to non-discrimination in the same manner as in federally assisted programs of the CITY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the AGREEMENT.

2. NON-DISCRIMINATION: The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the Regulations.

3. SOLICITATIONS FOR SUBCONSULTANTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.

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

5. SANCTIONS FOR NON-COMPLIANCE: In the event of the CONSULTANT's non-compliance with the non-discrimination provisions of this AGREEMENT, the CITY shall impose such sanctions as it may determine to be appropriate, including, but not limited to:

   - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
   - Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

6. INCORPORATION OF PROVISIONS: The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY.