

# AM NO. 12-066 (C6)

MEMO TO: City Council

FROM: John Marchione, Mayor

DATE: April 17, 2012

SUBJECT: APPROVAL OF CONSULTANT AGREEMENT FOR ENGINEERING

SERVICES, WASTEWATER PUMP STATION NO. 3 REHABILITATION

#### I. RECOMMENDED ACTION:

Approve the Consultant Agreement with Murray, Smith and Associates, Inc. (MSA) for design and construction services for Wastewater Pump Station No. 3 Rehabilitation in an amount not to exceed \$511,000, 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
Lynn Arakaki, Project Manager	425-556-2841

#### III. DESCRIPTION:

Wastewater Pump Station No. 3 is located on the southern end of Idylwood Park. Built in 1969, this station has had minor maintenance work done over the years but is nearing the end of its useful life and in need of extensive rehabilitation. The work will include a condition assessment of the station; replacement of pumps, controls, and electrical panel; addition of safety equipment and other items identified by the assessment. The Planning and Public Works Committee was briefed on this work at their February 14, 2012, meeting.

For this project, six firms from the City's consultant roster were asked to submit proposals. Public Works staff members evaluated the proposals and determined that Murray, Smith and Associates, Inc. (MSA) is the most qualified to perform the work. A copy of each firm's proposal is on file with the Construction Division and is available to the City Council upon request.

The scope of work for this consultant agreement includes the preparation of a preliminary design, including necessary data acquisition, analyses, and evaluations; identification of all permits to be obtained; and preparation of design reports for the station. After the selection of the final design, the consultant will prepare the construction plans, specifications, and estimates for the proposed improvements.

The final design will require additional site area in Idylwood Park for the operation of the pump station due to an increase in equipment sizing or change in site configuration. This will necessitate the coordination with the City's Parks Department for the use of additional park area.

#### IV. IMPACT:

A. <u>Service/Delivery:</u> This project will replace Wastewater Pump Station No. 3. The replacement of this station will assure continuation of service to the neighborhood served. This agreement includes the preparation of construction plans, specifications, cost estimates and engineering services during construction.

#### B. Fiscal:

Project Costs	
Design Consultant – MSA	\$ 511,000
City administration	49,000
Total	\$ 560,000

Project Funding:

Water/Wastewater C.I.P. \$560,000

#### V. ALTERNATIVE:

The City Council can choose not to approve the Agreement.

#### VI. TIME CONSTRAINTS:

The tentative schedule is as follows:

Notice to Proceed	May 2012
Preliminary Design	July 2012
Complete Final Design	March 2013
Construction	June 2013

City Council April 17, 2012 Approval of Consultant Agreement for Engineering Services-Wastewater Pump Station No. 3 Rehabilitation Page 3

# VII. LIST OF ATTACHMENTS:

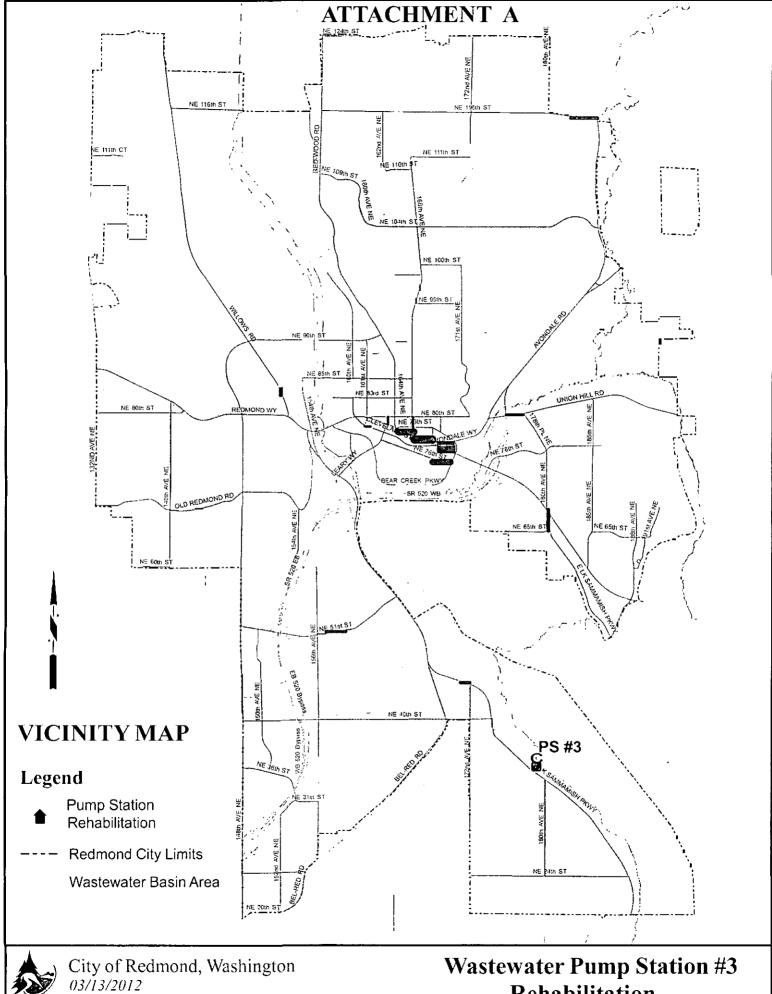
- A. Vicinity Map
- B. Consultant Agreement

William J. Campbell, Director of Public Works

Approved for Council Agenda

John Marchione, Mayor

4/9/12 Date



Rehabilitation

### ATTACHMENT B

# **CONSULTANT AGREEMENT**

PROJECT TITLE Wastewater Pump Station No. 3 Rehabilitation	WORK DESCRIPTION Provide engineering and construction services for the rehabilitation of a wastewater pump station.
PROJECT NO.	
REDMOND BUSINESS LICENSE NO.	CONSULTANT/ADDRESS/TELEPHONE Murray, Smith and Associates, Inc. 2707 Colby Avenue, Suite 1110
FEDERAL I.D. NO. 93-0768555	Everett, WA 98201 (425)252-9003
MAXIMUM AMOUNT PAYABLE \$511,000.00	COMPLETION DATE December 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	CITY OF REDMOND
By:	By:
Title:	
	ATTEST:City Clerk
	APPROVED AS TO FORM:
	City Attorney

#### **EXHIBIT A**

#### SCOPE OF WORK

for

# ENGINEERING SERVICES CITY OF REDMOND WASTEWATER PUMP STATION No. 3 REPLACEMENT March 2012

Murray, Smith & Associates, Inc. (MSA) has developed the following Scope of Work for engineering services for the City of Redmond's (City) Wastewater Pump Station No. 3 Replacement project. The scope and budget have been developed based on the review of the site and existing documents, and scoping meetings with City staff.

#### SCOPE OF WORK

The proposed Scope of Work for the Wastewater Pump Station No. 3 Replacement project is divided into the following work tasks:

Task 1	Project Management
Task 2	Data Collection and Field Investigations
Task 3	Alternatives Development
Task 4	Permitting Services and Coordination with Regulatory Agencies
Task 5	30% Design
Task 6	Final Design
Task 7	Bidding and Award
Task 8	Construction Support
Task 9	Commissioning and Close-Out
Task 10	Unanticipated Tasks

Detailed descriptions of each major work task follow.

#### Task 1 – Project Management

Under this task, MSA will manage all aspects of the project scope, schedule and budget. Project management services include:

- 1.1 Correspondence and coordination with City project manager and staff.
- 1.2 Monthly progress reports, invoices and schedule updates.
- 1.3 Staff and subconsultant management.
- 1.4 Conduct kick-off meeting, prepare draft and final agendas and meeting minutes.
- 1.5 Assist City in providing documentation and written responses to comments, questions, and concerns, as needed, for public and City of Redmond Parks coordination.

- Anticipate Notice to Proceed on April 1, 2012.
- Construction will be completed by Spring 2014.
- City to take lead on public involvement and Parks coordination.
- City to take lead on establishing SharePoint network to share information and manage, edit and publish documents related to the project.

#### Deliverables:

- Monthly progress reports, invoices and schedule updates.
- Meeting agendas and minutes, draft and final.
- Supporting documents/figures and written responses to public/Parks comments, as needed to assist City.

# Task 2 – Data Collection and Field Investigations

MSA shall evaluate existing conditions and collect data. Subtasks include:

- 2.1 Obtain and review existing records and data on the pump station, force main and influent sewers.
- 2.2 Conduct Site Visits
  - A. Conduct site visits with City Operations and Engineering staff at Pump Stations 17, 51 and 54 to learn City standard pump station features and expectation for construction materials and methods.
  - B. Conduct site visit with City Operations and Engineering staff to verify and supplement information, discuss current station and site challenges.
- 2.3 MSA's surveying subconsultant, *Touma Engineers and Land Surveyors*, will obtain survey information utilizing available data and record information, supplementing information with field survey as necessary.
- 2.4 MSA's geotechnical subconsultant, *GeoEngineers Inc.*, will perform geotechnical field investigations (borings), laboratory analysis and technical evaluations to characterize subsurface conditions once the location of the pump station has been determined. Geotechnical services will include:
  - A. Review of all existing geotechnical data and reports for the area.
  - B. Field explorations including two (2) borings, one (1) to 60 feet with a piezometer installation for caisson construction alternative and one (1) to 30 feet at potential building location.
  - C. Evaluating key geotechnical issue and potential recommendations for excavation and shoring, foundation and subsurface wall design considering potential high groundwater conditions, and evaluation of potential effects to surrounding facilities given construction dewatering requirements.

    Recommendations will also include seismic design parameters, liquefaction assessment, and other recommendations to meet the project needs.

- D. Recommendations for construction techniques, such as caisson type construction for the wet well/dry pit structure.
- E. Develop geotechnical report that will provide construction and design recommendations for proposed improvements.
- 2.5 MSA's environmental/permit specialist, *ESA*, will conduct field work at the site to determine the location of critical areas, delineate critical areas as necessary, and advise project team on environmental influences to the proposed pump station relocation site. The area to be evaluated includes the existing pump station parcel, the potentially affected shoreline area and 200 feet landward (the designated shoreline zone), and an area extending roughly 200 feet beyond potential relocation sites in the adjacent park property. It does not include an evaluation of the entire park parcel nor the residential parcel to the east. ESA will delineate any identified sensitive areas in the field to be professionally surveyed by others.
- 2.6 Obtain available, pertinent record drawings and studies/documents of existing 10-inch diameter AC force main and evaluate the condition of the 40 year old force main through site observations and performance history. This subtask may be deferred until construction of the pump station improvements when the existing force main will be exposed and cut for the new pump station connection.

- City will provide all available documentation for the pump station.
- City will provide access to pump station site and associated facilities, as well as access to the adjacent park parcel.

#### Deliverables:

• Copies of inspection reports, survey and geotechnical reports.

#### Task 3 – Alternatives Development

MSA shall evaluate data collected in the previous task, engage City staff and develop recommendations for the pump station and improvements to the site, force main and influent sewer to accommodate the City's needs. Subtasks include:

- 3.1 Review planning information and develop design criteria for the evaluation and design of pump station improvements taking into account City standards. Work with City through a series of team development meetings to establish station features and design criteria, which should include the following:
  - A. Based on the design criteria established, define system deficiencies.
  - B. Identify electrical systems and review applicable codes.
    - 1. Identify power requirements for new generator.
    - 2. Identify site lighting options.
    - 3. Identify telemetry and SCADA needs.
  - C. Identify site development criteria.
    - 1. Station/site access needs.

- 2. Environmental influences.
- D. Review pump station criteria.
  - 1. Pumping configuration.
  - 2. Station access features.
  - 3. Station piping and appurtenances.
- E. Implementation/station construction.
  - 1. By-pass pumping requirements.
  - 2. Mitigation requirements
- 3.2 Through the team development meetings with City staff, develop and evaluate alternatives to replace the pump station based on the station features and design criteria established in the previous subtask. Alternatives will be developed to a level that will allow adequate review and comparison during the team development meetings in order to eliminate unfavorable alternatives and define a preferred alternative. Comparison of alternatives may take into account cost, station configuration/location, site and station access, operation/maintenance considerations, implementation, permitting/environmental reviews, etc.
- 3.3 As a result of this collaborative process, a preferred alternative for the pump station replacement will be selected that will address the station feature and criteria established in the previous tasks. The preferred alternative plan will be documented in a brief email to the team.
- 3.4 Based on the preferred alternative selected, review the remaining Scope of Work for Engineering Services and make recommendations, if necessary, to modify the scope to reflect the current project.

- City staff will participate in team development meeting meetings.
- It is anticipated that MSA will conduct up to six (6) team development meetings.

## Deliverables:

- Emails to project team to document key team development meeting decisions
- Preferred alternative plan, via email.

#### Task 4 – Permitting Services and Coordination with Regulatory Agencies

With assistance from MSA's environmental/permit specialist, *ESA*, our team shall support the City's permitting efforts by providing the following permit-related services:

- 4.1 Assist City with pre-application discussions and negotiations with permitting agencies. Continue coordination with regulatory agencies through design.
- 4.2 Define permitting needs and develop a permit management plan to schedule, monitor and track progress with environmental reviews; pursue environmental reviews and permits, prepare applications and manage approval processes.
- 4.3 Critical Areas Study

- A. Prepare a Critical Areas Study, which will include identification of wetlands and streams, critical fish and wildlife habitat areas, and flood hazard areas at the proposed pump station locations.
- B. The Critical Areas Study will include conceptual mitigation plans as developed during team development meetings in Task 3.
- C. Prepare a Fish and Wildlife Habitat Management Plan.
- 4.4 Prepare a Shoreline Substantial Development Permit Application for the pump station.
- 4.5 Prepare an application for Hydraulic Project Approval.
- 4.6 Prepare for and attend meetings with City planning staff to discuss the SEPA process and review the site and proposed improvements. Prepare a SEPA checklist.
- 4.7 Develop a Design/Engineering Report for City review and submittal to Department of Ecology (DOE). Submit a draft report for City review and comment. Revise draft report based on City's review and submit to DOE.
- 4.8 Assist City with any necessary site work, building and electrical permits associated with the construction of the pump station. Expedite submittals as appropriate for early approval. Conduct pre-application process with City's planning department and prepare supporting documentation and drawings as necessary.

- City will be responsible for submitting all permit applications, payment of all permit application fees, scheduling and conducting all meetings with permitting agencies and jurisdictions.
- MSA will submit 30% design plan set to obtain the necessary permits/environmental reviews. Certain elements of the plans will be carried forward to 60% design to meet requirements necessary for permitting submittals.

#### Deliverables:

- Agendas, presentation materials, meeting notes, and action item lists for all meetings.
- Permit management plan.
- Draft and final Critical Areas Reports and Fish and Wildlife Habitat Management Plan.
- Draft and final Shoreline Substantial Development Permit application.
- Draft and final SEPA checklist.
- Draft and final Design/Engineering Report to City and DOE.
- Supporting documentation and drawings for site work, building and electrical permits.

#### Task 5 – 30% Design

Recommendations in the previous tasks will be further refined to develop 30% design plan set. For the purpose of developing this Level of Effort, it is anticipated that the proposed pump station will be a new wet well/dry pit type station with new control system, generator, and control building to house generator and electrical gear. The following subtasks expand

on this work and are intended to provide a more thorough understanding of MSA's project approach:

- 5.1 Prepare preliminary plans and cost estimate to 30% complete. In the preparation of the 30% design, conduct team development meetings to collaborate with City staff on the development of the proposed station improvements and design elements.
- 5.2 30% Design Review Following the City's review of the 30% plans, meet with City staff to receive comments on the design. MSA will document responses to critical design comments and incorporate revision into the plan set to carry forward into the 60% design.

# Assumptions:

- The 30% design plan set will include key project elements including, but not limited to, a site plan, piping plan, control building architectural plan and sections, station mechanical plan and sections, electrical site plan, one-line diagram and pertinent mitigation plans.
- It is anticipated that MSA will conduct up to three (3) team development meetings.

#### Deliverables:

- 30% plans and cost estimate.
- Emails to project team to document key team development meeting decisions.

# Task 6 - Final Design

This task will produce final plans and specifications for the new pump station. Plans and specifications will be presented at the 60%, 90% and 100% completion level for technical review by the City. Final bid-ready plans and specifications after the 100% completion level will incorporate all prior review comments and will be suitable for bidding. It is also anticipated that the force main is in good condition and no improvements are necessary beyond modifications at the pump station site.

For the purpose of developing this Scope of Services the following drawings are anticipated in the final design plan set:

#### General

Cover Sheet, Vicinity Map, List of Drawings and Design Criteria Table General Notes, Design Table, Legend and Abbreviations Erosion Control Plan, Details and Notes Survey Control Plan Temporary By-Passing Plan and Notes

#### Civil

Demolition Plan Site Plan Grading and Drainage Plan

Yard Piping Plan

Yard Piping Profiles

Site Restoration Plan/Landscaping Plan

Mitigation Plan - Wetlands and Stream

General Civil Site Details

General Civil Yard Piping Details

General Restoration/Mitigation Details

#### Structural Sheets

General Structural Notes & Quality Assurance Plan

Pump Station Plan

**Pump Station Sections** 

Generator and Control Panel Pads or Electrical/Generator Building Plan and Section as necessary

General Structural Details

#### Architectural Sheets

Architectural Building Section - Elevation Views

Wall Sections and Details

Roof Plan and Details

Floor Plan and Door Schedule

General Architectural Details

#### Mechanical Sheets

Pump Station Mechanical Plan

Pump Station Mechanical Sections

General Mechanical Details 1

General Mechanical Details 2

Pump Station HVAC

#### Electrical

Electrical Symbols and Legend

Electrical Site Plan

One-Line Diagram and Calculations

Station Plan and Sections

Power and Control Panel Sections

Power and Control Panel Wiring Diagrams and Schematics

Electrical Details

#### Anticipated elements of this task include:

#### 6.1 60% Plans and Technical Specifications

- A. The 30% design drawings will be revised and further developed to incorporate comments from the City's review of the 30% design. Work with City through team development meetings to develop 60% design package and deliver plans to approximately 60% design completion level.
- B. Prepare technical specifications and appendices to support the design and to be included in the Project Contract Documents. Specifications will be prepared based on specifications from the City's latest applicable pump station project. Review City's front end documents to maintain consistency between technical specifications and contractual documents.
- 6.2 90% Plans and Contract Documents The 60% design package will be revised and further developed to incorporate comments from the City's review of the 60% design. Work with City through team development meetings to develop design plans and contract documents to 90% design level.
- 6.3 100% Plans and Contract Documents The 90% design package will be revised and further developed to incorporate comments from the City's review of the 90% submittal. Work with City through team development meetings to develop design plans and contract documents to 100% design level.
- 6.4 Final Bid Ready Plans and Contract Documents Submit stamped and signed bidready contract documents and design plans to City for distribution.
- Opinion of Construction Cost Prepare engineer's opinion of probable construction cost at each submittal milestone (60%, 90% and 100%). The 90% and final (100%) Engineer's Opinion of Cost will be formatted to reflect the corresponding bid items in the bid schedule of the Bidding/Contract Documents. The final opinion of cost amount will be utilized for bid advertisement and itemized bid tabulation.
- 6.6 Construction Schedule Provide a potential construction schedule that will show detailed breakdown of construction activities. Submit the schedule with the 60%, 90%, and 100% final bid set submittals. The final estimate of construction duration will be used for the contract documents. Incorporate special schedule constraints into the Contract Documents.
- 6.7 Utility Coordination Design development will include collaboration with utility companies that are affected by the project. This will include coordination for electrical and power service to the pump station. If utility relocation must be done, the plans and specifications will include relocation designs and other information as required and prepared by the respective utilities. Collaboration with utility companies shall occur through the final design task and they will be asked to review the 60% progress plans for coordination and technical input. Coordinate meeting with utilities and distribute plans. Keep a written record of all communication with utility companies.
- 6.8 City Review Submit design packages, including plan set, specifications, project schedule and engineer's opinion of probable construction cost, to the City for review and comment. Schedule and conduct a team development meeting with the City to review the 60%, 90% and 100% design submittals and discuss comments.

- The City will provide their standard front end contract documents to MSA and MSA will incorporate them into a complete contract document, with approved modifications as necessary.
- MSA shall apply a Washington Professional Engineer's stamp with signature and date on the final bid-ready edition of the contract document.
- City will distribute all design review packages and bid documents for the project.
- It is anticipated that MSA will conduct up to ten (10) team development meetings over the course of this Final Design task.

#### Deliverables:

- Emails to project team to document key team development meeting decisions. 60%, 90% and 100% design review packages including plans, specifications, opinion of cost and schedule.
- Bid-ready contract documents and design plans for bid advertisement.

# Task 7 – Bidding and Award

This task includes supporting the City on an as-needed basis in providing assistance during bidding of the project. Anticipated elements of this task include:

- 7.1 Bidder Inquiries and Addenda Respond to questions from bidders, subcontractors, equipment suppliers and other vendors regarding the project, plans and specifications, as directed by the City. Maintain a written record of communications during the bidding process. Prepare draft addenda as necessary to clarify the contract documents.
- 7.2 Pre-bid Conference Attend a pre-bid conference for the project and provide support to the City for specific agenda items.
- 7.3 Bid Award Review Provide supplemental support in reviewing bids, verifying qualifications and recommending an award.

#### Assumptions:

- The City will coordinate with Builders Exchange for bid advertisement.
- The City will take the lead in tasks associated with bid advertisement, addenda distribution, plan holder administration, bid evaluation, bid tabulation, etc.
- The City will be the lead in receiving questions from bidders, subcontractors, equipment suppliers and other vendors. Upon referral from the City, MSA will respond to questions.

#### Deliverables:

- Record of bidder questions and inquiries.
- Draft addenda as required for the City to distribute to plan holders.

#### Task 8 - Construction Support

This task represents MSA's support of the project during the construction of the pump station. Support will be limited to incidental support and periodic collaboration with the City, the construction contractor, permitting agencies and others, all at the direction of the City.

- 8.1 Meetings Attend a pre-construction conference between City and construction contractor and invited agencies and utilities. MSA and subconsultants will be available to answer questions.
- 8.2 Submittals Review construction submittals, as directed by the City, for conformance with project documents. It is anticipated that MSA will be involved in reviewing all submittals and there will be approximately one-hundred (100) technical and administrative submittals.
- 8.3 Clarifications and Changes Assist with issuing clarifications to the construction contractor and producing design changes if necessary. It is assumed that MSA will prepare up to twenty (20) requests for information/clarification.
- 8.4 Special Inspection/Site Visits MSA's team will conduct special inspections (such as electrical/instrumentation, geotechnical and structural inspections) and/or visits to the site as requested by the City or as warranted by the progression of work. For the purpose of developing this scope of work, MSA anticipates up to twelve (12) special inspection/site visits.

# Assumptions:

- The City will provide full-time on-site inspection and will take the lead in administering and managing the construction contract and communicating with the construction contractor.
- City will provide direction to MSA with respect to involvement in project meetings, submittal reviews, issuing clarifications, etc.

#### Deliverables:

Responses to submittals, clarifications, changes as requested by the City.

## Task 9 – Commissioning and Close-out

This task represents MSA's involvement in assisting the City during the commissioning and construction close-out of the pump station. Support will be limited to testing, start-up, training and project close-out at the direction of the City.

- 9.1 Testing & Start-Up Assist the City with start-up, testing and commissioning of the facilities. Coordinate with the Contractor and the City for all factory and field testing.
  - A. Factory Testing Assist the City in reviewing and witnessing factory tests of equipment, including pumps and electrical components.

- B. Field Testing Assist the City in witnessing field testing of all equipment and appurtenances, in all modes of operation. Forms will be provided in the contract documents to provide a record of all testing procedures and results.
- 9.2 Training & Operation and Maintenance Manuals Assist the City with scheduling and conducting training on equipment and systems. Coordinate with the Contractor and the City to develop a training schedule that will include factory representatives as necessary or as required. Review and provide comments with regards to the operation and maintenance (O&M) manual prepared by the Contractor.
- 9.3 Final Inspection Assist the City with final inspection of the project with representatives from the City, MSA's project team and the Contractor. Assist the City in the preparation of a "punch list" of items of work remaining.
- 9.4 Record Drawings Prepare record drawings per the City's Record Drawing Requirements Version 12-2011 to indicate changes on the plans made during construction, based on notes and sketches of the construction contractor and inspector.

• City will provide a single copy of complete and fully-coordinated construction markups for production of as-built plans.

#### Deliverables:

- Contractor's operation and maintenance manual review comments.
- Record Drawings per the City's Record Drawing Requirements.

#### Task 10 - Unanticipated Tasks

This task will include additional unanticipated labor or expenses not specifically identified in the scope of work tasks defined above. Such work items will be implemented on a work order basis and will be undertaken only after written authorization from the City.

#### PROPOSED ENGINEERING FEES

The fee estimate shown in Exhibit B is a detailed breakdown of estimated engineering fees by work task and labor classification. These fees are based upon the proposed scope of work, basic assumptions, and the project schedule, as outlined herein. The work will be billed at the agreed upon rates as negotiated per the City's standard rates worksheet (Exhibit C) in effect at the time the work is performed. The MSA updates the Direct Salary Costs annually on January 1.

#### ESTIMATED SCHEDULE

MSA shall begin work immediately upon receipt of Notice to Proceed from the City and proceed according to the schedule presented in Exhibit D. It is anticipated the work program will take approximately 30 months to complete the tasks within this scope of work.

#### 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:

Wastewater Pump Station No. 3 Rehabilitation

Project Number:

Consultant:

Murray, Smith & Associates, Inc.

# NEGOTIATED HOURLY RATES

Classification	<u>Hours</u>	Rate	Cost
Principal Engineer IV - Jim Helton	36	\$184	\$6,624
Principal Engineer IV - Tom Perry	249	\$184	45,816
Professional Engineer V - Caroline Barlow	458	\$131	59,998
Professional Engineer IV - Garry Truyens	468	\$113	52,884
Engineering Designer II - Jenna Thelen	394	\$92	36,248
Technician IV - Harry Marx	264	\$118	31,152
Administrative I - Debbie Bibbins	51	\$69	3,519
			•
Subtotal:	1,920	···	\$236,241

# REIMBURSABLES

Mileage		\$1,715
Reproduction (copies, plots, etc.)		\$4,224
CAD		\$5,495
Postage		S755
	Subtotal:	\$12,189

# **SUBCONSULTANT COSTS (See Exhibit D)**

Subconsultants - Casne, CG Engineering, ESA, GeoEngineers, KDW & Tou	
	\$216,571
Subtotal:	\$216,571
TOTAL	\$465,001
CONTINGENCY	\$ 45,999
	0=11.000
GRAND TOTAL	\$511,000

# EXHIBIT D

# SUBCONTRACTED WORK

The City permits subcontracts for the following portions of the work of the AGREEMENT:

Project Name:

WW PS #9, 14 and Mattausch Abandonment

Project Number:

Consultant:

MSA

Subconsultant	Work Description	<u>Amount</u>
Casne CG Associates	Electrical Engineering Structural Engineering	\$80,976.00 \$41,244.00
ESA	Environmental, Permitting	\$47,645.00
Geo Engineers	Geotechnical	\$28,494.00
KDW	Architectural	\$10,508.00
Touma	Surveying	\$7,704.00
TOTAL		\$216,571
GRAND TOTAL		\$216,571

#### **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.