



Council Meeting: October 7, 2008

SUBJECT: Amendment of Agreement for Program Management Services between the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and Eisenberg, Olivieri and Associates (EOA, Inc.)

REPORT IN BRIEF

The City of Sunnyvale is one of 15 members of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP). SCVURPPP was formed to implement the National Pollution Discharge Elimination Permit (NPDES) issued to the cities, County, and Santa Clara Valley Water District who discharge storm water to the San Francisco Bay. SCVURPPP also provides a regional forum to best address storm water issues. These 15 agencies have signed a Memorandum of Agreement (MOA) and pay annual assessments to cover the cost of programmatic activities related to implementing the NPDES permit.

The MOA provides for the selection of one of the members as the Program's Contracting and Fiscal Agent. In June 2005, the City accepted the nomination to serve as the Contracting and Fiscal Agent, subject to reimbursement from the Program of all incurred costs. The Contracting/Fiscal agent acts as treasurer of Program funds and is responsible for implementation of proper accounting principles and procedures.

The primary role of the governing body of the Contracting/Fiscal Agent is the execution of contracts with Outside Contractors as directed and approved by the Management Committee of SCVURPPP. This includes the contract for Program Management Services, which at present is with EOA, Inc. Pursuant to Section 4.06 of the MOA, the governing body of the Contracting/Fiscal Agent may delegate authority to execute agreements and contracts to a designated employee of the Contracting/Fiscal Agent.

In order to assist the 15 agencies of SCVURPPP with complying with provisions of the existing NPDES permit, and to assist with negotiating permits that are considered by the agencies to be effective at addressing urban runoff pollution and reasonable to implement, SCVURPPP contracts for professional program management and technical assistance services with a firm that possesses specialized expertise in the area of urban runoff pollution prevention. These

services, as well as other costs of the Program, are funded through annual assessments paid by each of the participating agencies.

At its regular meeting on February 21, 2008, the SCVURPPP Management Committee voted to approve the Work Plan for FY 2008/2009, including the Budget Report which names Eisenberg, Olivieri and Associates (EOA, Inc.), as the continuing consultant for Program Management services.

Two issues are being brought forward for Council approval at this time: approval of an extension to the existing EOA, Inc. contract for Program Management services for FY 2008/2009, and approval to delegate authority to the City Manager (or his/her designee) to execute contract documents in the future.

BACKGROUND

In May 1990, Council approved an agreement that implemented the Santa Clara Valley Nonpoint Source Pollution Control Program. This Agreement joined the City of Sunnyvale with twelve other cities in Santa Clara County, plus the County and the Santa Clara Valley Water District together as "Co-permittees." The Agreement allowed these entities to jointly apply for and implement their NPDES storm water permits, which are regulated by the Regional Water Quality Control Board.

In December of 1999, the Co-permittees executed a Memorandum of Agreement (MOA) establishing the Santa Clara Valley Urban Runoff Pollution Prevention Program for a five year term. The MOA has been amended twice to extend the term, and is currently set to expire one year beyond the termination of the next National Pollutant Discharge Elimination System (NPDES) Permit, including any administrative extension of said permit. Members of SCVURPPP (including the City of Sunnyvale) submitted a reapplication for a new Storm Water NPDES Permit in February 2005. Discussion and negotiation regarding the language of this next permit is ongoing.

The contract for professional program management services is currently held by EOA, Inc. The original contract with EOA, Inc. was executed by the former Contracting/Fiscal Agent, Santa Clara Valley Water District. The contract was for a term of five years, with a total dollar value of \$13,080,918.

On February 16, 2006, the Management Committee of SCVURPPP voted to extend EOA, Inc. Agreement #A2455A for Program Management services, until such time as a new permit is in place, and to pursue an RFQ process at that time. In light of this, the City of Sunnyvale, in its function as the Contracting/Fiscal Agent, approved a two year extension effective June 30,

2006, with an expiration date of June 30, 2008, and a total contract price for the two year period of \$5,700,000.

EXISTING POLICY

Surface Runoff Sub-Element Policy 3.4, A.1 supports the City's continued participation in SCVURPPP to identify and develop Best Management Practices to assure the reasonable protection of beneficial uses of creeks and San Francisco Bay, as established in the Regional Board's Basin Plan and to protect environmentally sensitive areas.

Surface Runoff Sub-Element Policy 3.4, A.2 also states that the City will comply with regulatory requirements and participate in processes that may result in modifications to those requirements

DISCUSSION

The City of Sunnyvale accepted the nomination as Contracting/Fiscal Agent for SCVURPPP on June 14, 2005. Duties of the Contracting/Fiscal Agent are outlined specifically in the MOA dated 10/19/1999, Section 4.

On February 16, 2006, the Management Committee agreed that it would not be prudent to pursue a new provider of Program Management services while negotiations related to the new permit are ongoing. The existing provider of Program Management service had been very involved in the work on the new permit and was intimately familiar with the NPDES permit and the needs of the 15 agencies applying for the new permit.

On June 13, 2006, a request to extend the contract with EOA, Inc. was brought before the Sunnyvale City Council and a two-year extension was approved. The term of the extension was intended to coincide with the issuance of a new NPDES permit; at this time, the issuance of a new permit is still pending.

On February 21, 2008, the Management Committee of SCVURPPP passed a resolution adopting the FY 2008/2009 work plan, inclusive of the services of the existing contract for Program Management, EOA, Inc. It has been the consensus of the Management Committee, and was the finding of a Hilton Farnkopf and Hobson 2005 review of the term, scope and cost of the MOA, that EOA, Inc. has been providing excellent service to SCVURPPP.

Management Committee members have concluded that it would be most prudent to continue services with EOA, Inc. at this time because NPDES permit discussions and negotiations are currently underway and EOA, Inc. is

intimately familiar with the storm water issues facing the communities of the South San Francisco Bay. Undertaking efforts at this time to select a new contract for Program Management would be disruptive at a minimum and likely detrimental to those ongoing efforts related to the permit.

It is proposed that the existing agreement with EOA, Inc. be extended until June 30, 2009, in compliance with the Work Plan and in keeping with the direction of the Management Committee as expressed in the resolution adopted February 21, 2008. It is further proposed that the "not to exceed" contract price be amended as follows: total fees for all services including expenses and payments to sub consultants shall not exceed \$2,953,500 for FY 2008/2009.

It is further proposed that the City Council delegate authority to execute further contracts and contract extensions to the City Manager, or his/her designated agent, thereby facilitating timely and efficient processing and execution of contract documents.

It is in the City's interests and SCVURPPP's interests to maintain the contract with the current consultant for Program Management, EOA, Inc., at this time, while permit discussions and negotiations are ongoing. To facilitate the issuance and approval of future contract extensions and agreements for Program Management services, and in accordance with the requirements set forth in the MOA, Section 4, regarding the duties of the Contracting/Fiscal Agent, staff is recommending that the Council delegate authority to execute such agreements and contract extensions as are recommended by the SCVURPPP Management Committee to the City Manager or his/her designated agent.

FISCAL IMPACT

Costs of the program management contract are included in the annual budget for SCVURPPP, for which assessments are collected from all participating SCVURPPP members. The SCVURPPP assessment is budgeted in the annual operating budget for the Water Pollution Control Plant, and the extension will pose no additional fiscal impact to the City of Sunnyvale beyond the budgeted amount due, which is estimated for FY 2008/2009 to be \$272,266 (annual program assessment of \$253,750 plus estimated annual permit fees of \$18,516.)

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and

Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Approve an extension of contract agreement #A2455A with the program management contractor, EOA, Inc. through June 30, 2009, with a modified not to exceed price of \$2,953,500 for fiscal year 2008-2009.
2. Delegate authority to execute contracts on behalf of SCVURPPP, that have been approved for execution by the SCVURPPP Management Committee, to the City Manager or his/her designated agent.
3. Take no action

RECOMMENDATION

Staff recommends Alternative 1, to approve an extension of contract agreement #A2455A with the program management contractor, EOA, Inc. through June 30, 2009, with a modified not to exceed price of \$2,953,500 for fiscal year 2008-2009. Staff also recommends Alternative 2 to delegate authority to execute contracts on behalf of SCVURPPP, that have been approved for execution by the SCVURPPP Management Committee, to the City Manager or his/her designated agent.

Reviewed by:

Mary J. Bradley, Director of Finance
Prepared by: Timothy J. Kirby
Revenue Systems Supervisor

Approved by:

Amy Chan
City Manager

Attachments

- A. Consultant Services Agreement between the City of Sunnyvale, as SCVURPPP contracting and fiscal agent, and EOA, Inc. for Program Management Services
- B. Appendices A, B, and C to Consultant Services Agreement

**CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE, AS SCVURPPP CONTRACTING AND
FISCAL AGENT,
AND EOA, INC.
FOR PROGRAM MANAGEMENT SERVICES**

THIS AGREEMENT dated July 1, 2008, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and EOA, INC., a California corporation ("CONSULTANT").

WHEREAS, CITY is one of 15 members of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP); and

WHEREAS, SCVURPPP was formed to implement the National Pollution Discharge Elimination System (NPDES) Permit (Permit) issued to the cities, County, and Santa Clara Valley Water District who discharge storm water to the San Francisco Bay; and

WHEREAS, these fifteen agencies have signed a Memorandum of Agreement (MOA) and pay annual assessments to cover the cost of programmatic activities related to implementing the NPDES permit; and

WHEREAS, on July 1, 2005, CITY assumed the responsibilities of Contracting and Fiscal Agent for SCVURPPP; and

WHEREAS, on or about July 3, 2001, CONSULTANT entered into a contract with the previous SCVURPPP Contracting and Fiscal Agent for the performance of Program Management and Administrative Services, which contract was amended to expire on June 30, 2008; and

WHEREAS, Consultant has performed the functions of Program Manager and provided administrative services since September 4, 1997; and

WHEREAS, SCVURPPP filed a NPDES joint permit application in February 2001, which expired February 21, 2006, and requires reapplication for a new NPDES permit with the State of California Regional Water Quality Control Board; and the joint Permit was administratively extended on February 21, 2006, until a new Permit is issued by the Water Board; and

WHEREAS, on February 16, 2006, the SCVURPPP Management Committee voted to extend the EOA contract for Program Management services, until such time as a new permit is in place, and to pursue a Request For Quote process after that time; and

WHEREAS, on February 21, 2008, the SCVURPPP Management Committee voted to approve the FY2008/2009 Draft Work Plan, with the stipulation that the work plan is subject to the final budget, said budget naming EOA, Inc. as the Program Manager.

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide the services described in the Scope of Services, Appendix A, attached hereto and incorporated herein by this reference. The Schedule of Performance is set forth in Appendix C.

2. Time for Performance

The term of this Agreement shall be from July 1, 2008, through June 30, 2009 unless modified or terminated as provided in this Agreement.

3. Compensation

CITY agrees to pay CONSULTANT an amount not to exceed the fiscal year budgets contained in Appendix B, attached hereto and incorporated herein by this reference, in accordance with the rates set forth in Attachment B-1, as full compensation for the services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for services to the SCVURPPP Fiscal and Contract Agent Representative on a monthly basis.

4. Ownership of Documents

CITY, on behalf of SCVURPPP, shall have full and complete access to CONSULTANT's working papers and documents during progress of the work. Upon termination of this Agreement, all documents of any description prepared by CONSULTANT shall become the property of the SCVURPPP and shall be delivered to CITY as agent for SCVRUPP. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

5. Conflict of Interests

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. CONSULTANT shall not accept employment or any obligation which is inconsistent or incompatible with CONSULTANT's obligations under this Agreement.

6. Confidential Information

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONSULTANT may become aware in the performance of its services.

7. Compliance with Laws

a) CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, gender, age (persons 40 years or older), disability,

or any other basis to the extent prohibited by federal, state, or local law. All employees of CONSULTANT shall be treated during employment without regard to their race, creed, color or national origin.

b) CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

8. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

9. Indemnity

CONSULTANT agrees to defend, indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONSULTANT's performance under this Agreement.

10. Insurance

During the life of this Agreement, CONSULTANT shall take out and maintain policies of insurance as specified in Appendix B, Attachment B-2.

11. CITY Representative

LORRIE GERVIN, P.E., Environmental Division Manager shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

12. CONSULTANT Representative

ADAM W. OLIVIERI, P.E., Vice President, shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

13. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or sent by commercial courier, addressed as follows:

To CITY: Lorrie Gervin, Environmental Division Manager
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: Adam W. Olivieri
EOA, Inc.
1410 Jackson St.
Oakland, CA 94612

Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event, communication is deemed to occur on the next mail service day.

Effective communication between the parties of this agreement may from time to time require the efficiencies of telephone conversation or fax transmissions. Informal communications should not be construed to be notices as defined by this Agreement. However, if an informal communication results in an issue that is germane to this Agreement, it should be documented. The delivery of that documentation either by mail, personal delivery, or commercial courier shall be deemed to be notice, provided such delivery conforms with the criteria set forth herein.

14. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

15. Termination

Either party may terminate this Agreement by giving thirty (30) days written notice to the other. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at time of termination.

16. Entire Agreement; Amendment; Effects of Previous Agreement

This agreement, together with "Standard Consultant Agreement #A2455A" dated July 3, 2001, and the first amendment to that agreement dated June 20, 2006, constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

Except as provided herein, all remaining provisions of the "Standard Consultant Agreement" for management services for the Santa Clara Valley Urban Runoff Pollution Prevention Program, and the assignment by the Santa Clara Valley Water District to the City of Sunnyvale as Contracting Fiscal Agent effective July 1, 2005, shall remain in full force and effect

17. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST: CITY CLERK

CITY OF SUNNYVALE ("CITY")

By _____
Deputy City Clerk

By _____
City Manager

APPROVED AS TO FORM:

EOA, INC. ("CONSULTANT")

Assistant City Attorney

By _____
Don M. Eisenberg, Ph.D., P.E.
President, Principal Engineer

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APPENDIX A

SCOPE OF SERVICES

The services and products to be delivered pursuant to this agreement are for the administration and management of the Santa Clara Valley Urban Runoff Pollution Prevention Program (Program) pursuant to the Memorandum of Agreement (MOA) providing for its implementation, signed by the Co-permittees in December 1999. CONSULTANT will be retained to act as Program Manager as set forth in MOA Section 2.10, subject to the ongoing assignment of duties to CONSULTANT, including ongoing work from previous fiscal years, and approval of CONSULTANT's performance of these duties by the Program Management Committee.¹

Specific services to be provided include program management and administrative duties, permit management, and technical program support as set forth in the Program bylaws. Program Management and administrative tasks include general administrative assistance, Management Committee and subcommittee support and meeting facilitation, development and tracking of annual budget and expenditures, and coordination with the Program's fiscal agent and legal counsel. Permit management tasks include preparation and submittal of annual work plans, annual reports, and other Program deliverables to the San Francisco Bay Regional Water Quality Control Board (Regional Board), representation of the Program during working sessions with Regional Board staff and other groups and authorities, negotiation of permit conditions and submittal of permit application, and identification and resolution of emerging issues which may potentially affect the Program. Technical program management tasks include development of scope of services, schedules, and budgets for technical services, contractor and subcontractor procurement and oversight, and review of contractor and subcontractor work products.

The City of Sunnyvale, as Program's Contracting and Fiscal Agent (CITY or CFA), as defined within MOA Section 4, will work with the Management Committee to authorize payment of CONSULTANT invoices. The Budget Ad Hoc Task Group (AHTG), comprised of several Co-permittee representatives, will assist CONSULTANT in responding to issues as they arise, clarify and discuss alternative approaches to conflict resolution, and review CONSULTANT performance and work products.

1.0 PROGRAM MANAGEMENT/ADMINISTRATION

1.1 General Administrative Assistance

CONSULTANT shall provide general administrative assistance to the Program as directed by the Management Committee and detailed in Bylaws Section 200. Tasks may include: assisting revision of the Program Bylaws, policies and procedures; developing partnership agreements with external organizations to the Program to help achieve urban runoff pollution prevention goals; maintenance of a telephone center to receive, respond to, and forward calls from the public; distribution of Program materials to the general public; and other general support tasks.

¹Contract duration and annual renewal provision are per Contracting and Fiscal Agent's approval (letter dated April 3, 2001) of the Program Management Committee's letter (dated January 31, 2001) that requested "Continuation of contracted services for Program Management."

CONSULTANT will develop a master Program schedule that contains all formal deliverable/action dates. The schedule will include but not be limited to: permit-required submittals; monitoring elements from the 5-year monitoring plan and individual monitoring project work plan schedules; public outreach elements associated with strategies, conceptual plans, contract, and project work plans; and administrative schedules such as the budget cycle, etc. The master schedule is to provide indicators that differentiate regulatory committed deadlines from internal Program schedules. The master schedule will be updated annually to coincide with the annual work plan (March 1 of each year).

1.2 Program Meetings Facilitation

CONSULTANT shall facilitate and support up to 12 Management Committee meetings and up to 40 other Program subcommittee and/or AHTG meetings per year over period of this Agreement. Tasks include development and distribution of agendas, posting agendas, compliance with state and federal open meeting laws for announcing, holding and conducting public meetings, updating mailing lists, copying, reserving meeting places, facilitating meetings, drafting and finalizing minutes, and organizing/conducting follow-up activities at the direction of the Management Committee.

1.3 Budget Preparation

CONSULTANT will assist the Management Committee in development and drafting of annual budgets for the Program for each fiscal year covered by the term of this Agreement and according to a schedule set forth in Section 320 of the Bylaws or as otherwise designated by the Management Committee. Tasks include organizing meetings, identifying and applying for grant funds as directed by the Management Committee, identification and budgeting of nondiscretionary projects, conducting a process for budgeting of discretionary projects, and facilitating meetings.

CONSULTANT will determine the total nondiscretionary assessment amount for each Co-permittee according to current assessment percentages established in the Program's MOA, Section 3.01. CONSULTANT will also determine the total discretionary assessment based upon each Co-permittee's support of discretionary projects as confirmed by its Management Committee representative. CONSULTANT will send out invoices for each Co-permittee's total assessment with direction to provide payment to the CFA.

1.4 Budget Reporting

CONSULTANT will coordinate with the CFA to track receipts and expenditures debited/credited to the Program Trust Fund and to obtain budget status information in order to perform the following budget reporting tasks. All budget reports will be formatted in a clear and concise manner, such that all expenditures, revenues, encumbrances, and adjustments are detailed by project and budget line item.

1.4.1 Semiannual Budget Reconciliation

CONSULTANT will prepare, with CFA assistance, a midyear budget review, as directed by the Management Committee but usually in February (for the period July 1 through December 31); and an end-of-year budget reconciliation in August (for year ending June 30) of each year. The reconciliation will detail all revenue, expenditures, projected carryover funds, and unexpended unencumbered Co-permittee funds per Program Bylaws Section 340 and MOA Section 3.03.

1.4.2 Budget Updates/Status Summaries

CONSULTANT will prepare, with the assistance of the Budget AHTG, quarterly budget updates that document all expenditures, reallocation of funds, or movement of monies. CONSULTANT will track expenditures and provide status reports to the Management Committee. Status reports will track budgeted, encumbered, encumbered paid, encumbered remaining, and unencumbered amounts by budget line item.

1.5 Legal Liaison

CONSULTANT will communicate with, and provide assistance to, Program legal counsel on behalf of the Program per MOA Section 2.11. Work performed over the period of this agreement includes holding up to five meetings and nine extended telephone discussions with counsel per year, in which Management Committee representatives may or may not participate.

1.6 Information Processing and Reporting

CONSULTANT shall assist Co-permittee representation of the Program to other organizations or agencies by providing information and supporting feedback. Information shall be distributed to the Co-permittees at the next Management Committee meeting, placing such information on the agenda for discussion/decisions as appropriate. Time-sensitive materials may be distributed more expediently, as needed.

1.7 Public Information/Participation Program Development and Management

CONSULTANT shall conduct long-range planning, and evaluation (implementation contained in Task 3.5) as directed by the Management Committee of the Program's Public Information/Participation (PI/P) activities, including: coordinating the annual process for PI/P project review, developing the PI/P Element Annual Work Plans, preparing the PI/P Element Annual Report, coordinating the outreach strategy with the Water Management Initiative (WMI), and updating the Program's PI/P strategy. CONSULTANT shall also provide support, as needed and approved by the Management Committee, to Co-permittees' requests for public education assistance.

2.0 PERMIT MANAGEMENT

2.1 Document Preparation

2.1.1 Annual Report Preparation

CONSULTANT shall prepare the Program annual report, to satisfy permit provision C.6 for each fiscal year covered by this agreement (i.e., fiscal year 00-01, 01-02, 02-03, 03-04, and 04-05) and obtain the approval of the Management Committee to submit the reports to the Regional Board. The reports are due to the Regional Board on or before September 15 of each year.

2.1.1.1 Co-permittee Report Assistance

Work includes, but is not limited to, development and distribution of information and generation of surveys, questionnaires, written guidance, and example report formats by May of each year (subject to Management Committee approval) to facilitate Co-permittee annual report preparation.

2.1.1.2 Program Report Generation

CONSULTANT will request, obtain, and compile annual report information prepared by the Co-permittees. CONSULTANT shall acquire and compile all other pertinent information regarding Program activities. CONSULTANT will prepare and submit up to two drafts of the Program Annual Report per year for Management Committee review, respond to comments from the Management Committee, and reproduce up to 50 copies per year of the final report for distribution to the Co-permittees and the public. CONSULTANT will provide technical review of sections of the Co-permittees' Annual Reports to evaluate consistency with reporting guidelines.

2.1.2 Work Plan Preparation

CONSULTANT shall prepare a draft work plan for the Program for each of fiscal years (FY) 2002-2003 through 2006-2007, provide guidance to the Co-permittees in preparation of draft annual work plans, and facilitate submittal of work plans to the Regional Board by March 1 of each year per permit Section C.6.

2.1.2.1 Co-permittee Work Plan Assistance

Work includes, but is not limited to, development and distribution of information and guidance, questionnaires, and example work plan formats (subject to Management Committee approval) for the Co-permittees that facilitate Co-permittee work plan preparation.

2.1.2.2 Program Work Plan Generation

CONSULTANT will request, obtain, and compile work plan information prepared by the Co-permittees. CONSULTANT shall acquire and compile all other pertinent work plan tasks and support information regarding Program activities. CONSULTANT will prepare and submit up to two drafts of the Program work plan per year for Management Committee review, respond to comments from the Management Committee, and reproduce up to 50 copies of the final draft work plan per year for distribution to the Co-permittees and the public.

2.2 Permit Compliance Assistance

2.2.1 Co-permittee Permit Compliance Assistance

CONSULTANT will assist each Co-permittee in the understanding and effective implementation of permit requirements. As directed by the Management Committee, work may include preparation of guidance documents, identifying key indicators of the effectiveness of activities, and development of an evaluation method for performance of the Program collectively and for each Co-permittee. CONSULTANT will review progress, problems, and suggestions for improving the activities with each Co-permittee.

2.2.2 Co-permittee Review Meetings

CONSULTANT will attend and prepare a summary table of continuous improvement items identified at each Co-permittee Regional Board review meeting. CONSULTANT will compile a list of continuous improvement items for Management Committee review.

2.2.3 *Co-permittee Staff Training*

CONSULTANT will annually conduct up to four training workshops or equivalent as directed by the Management Committee for Co-permittee staff. Workshops will focus on technical advice to Co-permittees and new technology and information to improve or replace existing Best Management Practices. At the direction of the Management Committee, workshops may include educational outreach to industries, business groups, and/or developers and contractors.

2.3 **Implementation of Continuous Improvement Items**

CONSULTANT will investigate continuous improvement items identified in Co-permittee review meetings, Program work plans, and Program Annual Reports. CONSULTANT will, upon direction by the Management Committee, develop work plans and associated budgets and work plans for specific Program related continuous improvement action items. Work plans will include an evaluation of the relative priority of the continuous improvement item compared to projects already budgeted for the same time period. Negotiate with Regional Board to reprioritize and reschedule existing and planned Program projects as necessary to facilitate work on the continuous improvement item without impacting Program budgets that have been previously approved by the Management Committee. The results of the continuous improvement process will be summarized and included in the Program Annual Report.

2.4 **Identification of Potential Regulatory Impacts and Attendance at External Meetings**

CONSULTANT shall assist the Management Committee to identify regulatory issues affecting the Program, prepare comments on applicable proposed regulations, and represent the Program at applicable public hearings and meetings. Additionally, over the period of this agreement, CONSULTANT will represent the Program at up to 88 meetings per year with other groups with influence over or information concerning new or improved opportunities to control storm water pollutants. These groups may include, but are not limited to, the Regional Board, State Water Resources Control Board, Bay Area Storm Water Management Agencies Association, Regional Monitoring Program, California Storm Water Quality Task Force, Urban Pesticide Committee, Watershed Management Initiative Core Group, environmental groups, and public and special interest groups, as approved and/or directed by the Management Committee.

CONSULTANT will obtain updates to the state database concerning industries which have filed a Notice of Intent to comply with the National Pollutant Discharge Elimination System Permit for Storm Water Discharges Associated With Industrial Facilities, and provide this information to the Co-permittees on a regular basis *or as frequently as provided-with updates from the state or Regional Board.*

2.5 **Preparation of Permit Application**

According to the application submittal schedule required by the Regional Board, the CONSULTANT shall conduct the following tasks to prepare and submit the Program's application to renew its National Pollutant Discharge Elimination System Permit.

- Meet with Regional Board staff, Program legal counsel, and a specially-formed Program AHTG;
- Prepare and submit one draft application to the AHTG;
- Revise the draft application according to AHTG comments;

Submit revised draft for second AHTG and Management Committee review and revise per comments;

Submit the final draft application to the Management Committee for approval;

- Submit the final application to the Regional Board;
- Coordinate development of the permit with the WMI via its regulatory subgroup; and
- Make a presentation to the Regional Board at a regular Board meeting.

3.0 TECHNICAL PROGRAM MANAGEMENT

3.1 Subcontractor Selection and Contract Management

CONSULTANT shall assist the Management Committee in retaining and managing services for specific products or services that CONSULTANT cannot or will not provide directly and which have been budgeted for by the Program. This includes subcontractors to CONSULTANT. CONSULTANT will develop projects/services descriptions subject to approval by the Management Committee. CONSULTANT will advertise for proposals on behalf of the Program and assist the Management Committee in the selection of contractors or subcontractors. CONSULTANT will provide oversight of all contracted or subcontracted work to ensure schedules are maintained and projects/services are kept within the specified subcontract budget.

CONSULTANT will utilize consultant selection processes and contracting procedures as directed by the Management Committee and Bylaws Section 200.1.6 and which are comparable to consultant selection procedures acceptable to the contracting agent.

3.2 Subcontractor Technical Review

CONSULTANT will provide technical review of work products of contractors and subcontractors and provide recommendations to the Management Committee regarding the quality of the work and any modifications that would improve the final product.

3.3 Performance Standard Development

CONSULTANT shall assist the Management Committee in the development of one performance standard per year during the period of this agreement, or substantially improve one or more existing performance standards up to the equivalent level of effort of developing one new performance standard.

3.4 Monitoring Program and Permit-Related Projects Development and Implementation

CONSULTANT shall assist Management Committee with implementation of FY 2001-2002 through FY 2005-2006 monitoring projects and other specific permit-related projects consistent with the annual and 5-year monitoring program contained in the Program's fiscal year work plans. CONSULTANT shall meet quarterly with the Monitoring AHTG to identify projects and products needed to comply with permit provisions C.7. and C.9 and to develop project scopes and time schedules and to review and approve the results of the monitoring projects.

CONSULTANT shall develop and maintain a comprehensive quarterly tracking document for distribution at the Monitoring AHTG and interested Management Committee representatives. The tracking document shall indicate all current and planned monitoring projects and be updated quarterly to indicate project name and purpose, current status (completed, suspended, active, planned), quarterly progress, budget, next steps, and final completion date. The table shall also track any changes as they occur to the name, scope, budget, and

scheduled completion date for monitoring projects.

3.5 Public Information and Participation

CONSULTANT shall assist the Management Committee in implementing FY 2001-2002 through FY 2005-2006 PI/P Projects consistent with the PI/P element contained in the Program's annual work plans. CONSULTANT shall work with the appropriate AHTG to review and approve the results of PI/P projects.

4.0 PERFORMANCE EVALUATION

4.1 Internal Program Evaluation

CONSULTANT shall assist the Management Committee in the performance of an annual internal Program performance evaluation per Bylaw Section 200.4². CONSULTANT shall propose evaluation criteria and develop tools and processes as necessary to acquire, compile, and evaluate the Program's efficient management of funds and completion of specific Program tasks within allocated budgets and time frames. CONSULTANT shall present the results of the evaluation in a Program Evaluation Report for Management Committee review by November 15 of each year. Where appropriate, recommendations will be incorporated in the Annual Report and/or Annual Work Plan as part of the Program's Continuous Improvement Process.

4.2 CONSULTANT Self-Evaluation

CONSULTANT shall conduct an annual self audit and provide a report on performance of CONSULTANT's actions as Program Manager, as specified in the Bylaws Section 200.5. CONSULTANT shall propose evaluation criteria and processes to determine the effectiveness and efficiency of its actions as Program Manager. CONSULTANT shall present its results in a Program Manager Performance Evaluation Report submitted in May for Management Committee review and approval.

4.3 External Program Evaluation

Upon direction by the Management Committee, CONSULTANT shall provide staff support for up to two external program evaluations by a party approved by the Management Committee during the term of this Agreement. This support shall include, but not be limited to, providing the said party access to Program documents and records to assess: (1) permit compliance; (2) the effectiveness, efficiency, and benefits of the Program's outreach, monitoring, and other collaborative pollution prevention efforts; (3) the Management Committee's management of funds held in trust; and (4) the CFA's accounting practices.

5.0 ADDITIONAL WORK

Additional work will only be performed upon approval of the Management Committee. Management Committee review of the proposal and performance of the CONSULTANT will form the basis for approval of entertaining negotiations between the Management Committee and CONSULTANT for annual renewal of this Agreement beyond the time for performance of the Agreement..²Implementation of Bylaws Section 200.4 was defined and approved by the Committee on August 17, 2000, according to the letter dated June

6.0 GENERAL PROVISIONS

6.1 Contract Manager

The Contract Manager (“CM”) for this contract shall be designated from staff of the Contract/Fiscal Agent. Any modifications to the terms of this contract shall be approved by the Program Management Committee and submitted to CITY to process.

6.2 Personnel Changes

The CM and the Management Committee shall be notified in writing of any changes to CONSULTANT’s primary staff for this project.

6.3 Legal Services

No legal services, opinions, or testimony are included in this Scope of Services.

6.4 Program Property

All documents and equipment that have been paid for with funds under this Agreement shall be the property of the Program and delivered to an agency or other party as directed by the Management Committee within 14 calendar days of such a request by the Management Committee or 30 days after completion of the project, whichever comes first.

7.0 NOTIFICATION TO PROCEED WITH SUBSEQUENT FISCAL YEARS WORK

7.1 Subsequent Fiscal Year Work

CONSULTANT shall perform subsequent fiscal year work as approved by the Management Committee and notified in writing by the CFA. CONSULTANT shall not expend or cause to be expended any monies budgeted for subsequent fiscal years without prior documented approval from the Management Committee and written notice to proceed from the CFA. Any monies budgeted for subsequent fiscal years expended without prior written approval by the Management Committee and CFA will not be compensated and will not be considered as work performed under this agreement until such approvals have been issued.

7.2 Notification to Proceed With Subsequent Fiscal Year Work

Based on the Program's annual budget, CONSULTANT will present to the Management Committee on March 1, of each fiscal year CONSULTANT's proposal to perform the work items for the subsequent fiscal year. Management Committee approval of the proposal and performance of CONSULTANT will form the basis for notification to proceed with the work specified within this Agreement for subsequent fiscal years.

7.3 Commencement of Subsequent Fiscal Year Work

CONSULTANT shall commence with work specified for subsequent fiscal years only upon authorization of the Management Committee.

7.4 Subsequent Fiscal Years Budgets

The budget for subsequent fiscal years (as presented in Appendix **B**) is approximate and is based upon an assumption of level of effort similar to that budgeted for FY 2005-2006 for all the tasks described herein. The subsequent fiscal years budgets are subject to change upon written notification by the Management Committee.

APPENDIX B
FEES AND PAYMENT AND
INSURANCE

Total fees for all services including expenses and payments to subconsultants shall not to exceed \$2,953,500 for fiscal year 2008-2009 payable on time-and-materials basis according to the attached hourly fees and direct expense markup schedule, Attachment B-1. In addition, CONSULTANT shall be paid fees for ongoing activities attributable to FY 2004-2005 and FY 2005-2006, as long as the total expenditures for FY 2004-2005 do not exceed \$2,690,000, for FY 2005-2006 do not exceed \$2,800,000, for FY 2006-2007 do not exceed \$2,800,000, and for FY 2007-2008 do not exceed \$2,900,000.

FY 2008/2009 Contract Budget

Program Management - SC90	603,513
Project Group - Monitoring -SC94	567,980
Project Group - Performance Standards - SC92	571,803
Project Group - PIP/WEO - SC93	401,500
Project Group - POCs Controls -SC95	415,000
Project Group - Regulatory Assistance - SC91	393,704

TOTAL FY2008/2009 Contract Amount	<u>\$ 2,953,500</u>
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**ATTACHMENT B-1
FEE SCHEDULE
FY 2008-2009
(SCVURPPP Special Rates)**

The following fee schedule covers personnel rates for EOA, Inc. staff.

Our charges are divided into two categories: personnel, and outside direct expenses. A new fee schedule is issued at the beginning of each year. Charges for all work, except where other arrangements have been made, are based on the new schedule of charges. Annual fee increases are set at 4%.

PERSONNEL

Personnel charges are for any technical, clerical or administrative work necessary to perform the project. Work tasks include geologic and environmental consulting, engineering and computer services, regulatory liaison, and report preparation. Personnel rates are as follows:

Personnel Category	Hourly Rate
Principal	\$195.77
Managing Engineer/Scientist III	\$183.87
Managing Engineer/Scientist II	\$181.71
Managing Engineer/Scientist I	\$179.55
Senior Engineer/Scientist III – Project Leader	\$164.40
Senior Engineer/Scientist II	\$146.02
Senior Engineer/Scientist I	\$130.87
Associate Engineer/Scientist II	\$122.22
Associate Engineer/Scientist I	\$ 99.51
Technician	\$ 80.04
Clerical/Computer Data Entry	\$ 59.49

Charges for professional services are in increments of one quarter-hour.

Depositions/legal testimony charged portal-to-portal, at 200% of standard rates, with a four-hour minimum charge. In accordance with California Civil Procedure 2037.7, where applicable, the minimum fee must be paid prior to commencement of testimony. Preparation for court cases is charged on a time-and-materials basis as outlined in this fee schedule.

OUTSIDE DIRECT EXPENSES

Reimbursement for expenses directly related to services provided will be charged at cost plus 10%. Examples of such direct expenses include:

- Costs of subconsultants or subcontractors
- Costs of special fees (insurance, permits, etc.)
- Costs of long-distance telephone, copying, drafting, blueprints, etc. (EOA copies charged at \$ 0.10 each)
- Computer time for special graphic or data analysis applications at \$10/hr of computer time.
- Costs or rental of special equipment
- Costs of authorized travel outside Bay Area
- Automobile mileage directly related to services (federally approved rate)

INVOICES

Invoices are prepared and submitted on a monthly basis, as either final or progress billings.

Attachment B-2

INSURANCE REQUIREMENTS FOR CONSULTANT

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance Consultant shall maintain limits no less than:

1. **Commercial General Liability**: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. ISO Occurrence Form CG 0001 is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required if Consultant owns any vehicles. Otherwise, non-owned and hired automobile liability coverage is required.
3. **Workers' Compensation** and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability Insurance**: Liability Insurance appropriate to the Consultants Profession: \$1,000,000 per claim and aggregate.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** and **automobile liability** policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, if any, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers, except as follows. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of section 2872 of the Civil Code of California.

2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not effect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party except after thirty (30) days' prior written notice has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Consultant shall furnish the City of Sunnyvale with original a Certificate of Insurance affecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

APPENDIX C

SCHEDULE

1. PROGRAM MANAGEMENT/ADMINISTRATION (as directed by Management Committee in approved Annual Program Workplan)

a. Ongoing Tasks

- Administrative Duties (1.1)
- Management Committee Meetings (1.2)C **Frequency: monthly, third Thursday**
- Other Meetings (1.2)
- Budget Reporting (1.4.2) **Quarterly Status Reports to Management Committee**
- Coordinate With Program Fiscal Agent
- Coordinate With Program Legal Counsel
- Develop and Manage PI/P Program (1.7)

b. Time-Specific Tasks

- End-of-Year Budget Reconciliation: **September of each year**
- Invoice co-permittees for next fiscal year assessment: **June of each year**
- Draft subsequent fiscal year program budget: **December of each year**
- Final subsequent fiscal year program budget: **January of each year**
- Midyear budget reconciliation: **February of each year**

2. PERMIT MANAGEMENT (as directed by Management Committee in approved Annual Program Workplan)

a. Ongoing Tasks

- Review Progress With Each Copermittee (2.2.2): **Once each fiscal year or as needed**
- Conduct Training Workshops or Equivalent (2.2.3): **up to four per year**
- Identify Regulatory Issues/Prepare Draft Comment Letters (2.3): **as required**
- Represent the Program (2.3): **as required**
- Co-permittee Work Plan Guidance (2.1.2.1): **once per year**
- Implement Continuous Improvement Tasks (2.5): **as required**

b. Time-Specific Tasks

- Draft Annual Report: **August each year**
- Final Draft Annual Report: **August Management Committee meeting**
- Draft Program Work Plan: **February each year**
- Final Program Work Plan: **February Management Committee meeting**

3. TECHNICAL PROGRAM MANAGEMENT (as directed by Management Committee in approved Annual Program Workplan)

a. Ongoing Tasks

- Procure Contract/Subcontract Services
- Oversight of Contract/Subcontract Services
- Technical Review of Contractor/Subcontractor Work Products
- Performance Standards Development/Revision: one per year
- Implementation of Monitoring Projects and Permit Related Projects (3.4)
- Implementation of PI/P Projects (3.5)

b. Time-Specific Tasks

- Monitoring Presentation to Management Committee (3.4): **quarterly**

4. PERFORMANCE EVALUATION (unless otherwise directed by the Management Committee)

a. Ongoing Tasks

b. Time-Specific Tasks

- Program Evaluation Report (4.1): **December of each year**
- Program Manager Performance Evaluation Report (4.2): **Draft April of each year and final in September each year included with Annual Program Report**