

**Council Meeting: August 10, 2010****SUBJECT: Approve an On-call Contract for Construction Management and Support Services in Conjunction with Sunnyvale Works! Projects (F1007-09)****BACKGROUND**

Since the start of the **Sunnyvale Works!** program in Spring 2009, the City has awarded at least 30 contracts for “shovel ready” capital improvement projects and multiple construction design contracts, more than doubling customary averages. Additional **Sunnyvale Works!** projects are anticipated over the next year. Each of these projects requires careful management of contractors in the field and of work progress to meet established construction deadlines. The Public Works Department is not sufficiently staffed to handle this substantial increase in workload. The situation has been compounded by the extended absence of the Assistant City Engineer.

Council awarded a six-month contract to CSG Consultants, Inc. in November 2009 in the amount of \$341,250 to assist the Department of Public Works Engineering Division in managing the significant increase in capital improvements. This contract has been expended, and approval is requested to establish a new contract with CSG Consultants through the end of FY 2010/2011. The total amount requested for the next 10 ½ months is \$754,400 for on-call construction management/support and engineering services. This amount is based on approximately 112 hours per week among three key contract positions: Principal Engineer, Construction Manager and Associate Engineer. The amount of hours represents a 24% increase in work hours over the previous contract, largely due to the number and scale of Sunnyvale Works! projects in process, as well as those anticipated in this fiscal year.

It should be noted that CSG Consultants has agreed to hold pricing at 2009 rates even though it has implemented hourly price increases of 5.7% for Principal Engineer, 7.1% for Construction Manager, and 4.2% for Associate Engineer.

**DISCUSSION**

Customarily, staff would issue a Request for Proposals (RFP) for a contract of this scope to ensure that the City is receiving the best value for services received (even though this type of professional service can be exempted from the competitive proposal process per Section 2.08.070(b)(1) of the Sunnyvale Municipal Code). Given the number of accelerated capital projects in process and lack of available staff to manage them, and due to the critical nature of the

work needed to ensure successful/timely completion of multiple projects, staff has not undertaken a competitive proposal process for this particular contract.

CSG Consultants, Inc., is uniquely qualified to provide this type of staff augmentation, working exclusively with public agencies and providing construction management and support services to a number of Bay Area jurisdictions such as San Mateo, Redwood City, Pacifica, and Half Moon Bay. Though a competitive proposal process was not utilized for this contract or its predecessor, it should be noted that CSG Consultants has since been pre-qualified in a number of service areas under the **Sunnyvale Works!** Pre-qualification Program, including construction management services, streets and roadways, and water/wastewater utilities.

Work performed under this contract will include the following services: Engineering design and administration, construction management, and construction inspections.

Staff will reevaluate the need for this contract at the midway point, and may terminate it early if significant progress is made on current projects, contingent upon the return of the Assistant City Engineer or the addition of in-house staffing at a similar level of technical expertise.

#### **FISCAL IMPACT**

Sufficient funds are budgeted in various capital projects, including but not limited to: ARRA grant-funded project 828180 Homestead Road Pavement Overlay; Highway Bridge Rehabilitation grant-funded projects 825610 Fair Oaks Bridge Rehabilitation over Caltrain and Hendy, and Calabazas Creek Bridge Replacement; Projects 818100/819610 Public Safety Buildings – Roofs and HVAC; several utilities projects, including 815203 Replacement of Water/Sewer Supervisory Control System, 825411 Hamilton Plant Emergency Generator and Mechanical Reconstruction, 825431 Well Connections to Transmission Main, and 825451 Citywide Water Main Replacements, and Water Pollution Control Plant related projects. Work associated with this contract may also be expensed to Operating Program 307, Capital Project Administration.

#### **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.

**RECOMMENDATION**

It is recommended that Council award a contract to CSG Consultants, Inc. for on-call construction management and support services through June 30, 2011, in substantially the same form as the attached Consultant Service Agreement and in an amount not-to-exceed \$754,400.

Reviewed by:

Grace K. Leung, Acting Director, Finance  
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

Marvin Rose, Director, Public Works

Approved by:

Gary M. Luebbbers, City Manager

**Attachments**

A. Draft Consultant Services Agreement

**ATTACHMENT A  
DRAFT**

**CONSULTANT SERVICES AGREEMENT BETWEEN  
THE CITY OF SUNNYVALE AND CSG CONSULTANTS, INC.  
FOR ON CALL PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT dated \_\_\_\_\_ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and CSG CONSULTANTS, INC. ("CONSULTANT").

WHEREAS, CITY is in need of on call professional engineering services, including but not limited to, civil engineering design support, project coordination, CIP administration, construction management and construction inspection services; and

WHEREAS, CONSULTANT possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" attached and incorporated by reference. CONSULTANT shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be from August 11, 2010 to June 30, 2011, unless otherwise terminated. CONSULTANT shall deliver the agreed upon services to CITY as specified in Exhibit "A". Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall supply any documents or information available to City required by CONSULTANT for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONSULTANT at the hourly rates and job classifications as listed in the Billing Rates section of the attached Price Proposal (Exhibit "B"). Total compensation shall not exceed Seven Hundred Fifty Four Thousand Four Hundred and No/100 Dollars (\$754,400.00) unless upon written modification of this Agreement. CONSULTANT shall submit invoices to CITY no more frequently than monthly for services provided to date Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY'S Accounts Payable Unit.

5. Ownership of Documents

CITY shall have full and complete access to CONSULTANT's working papers, drawings and other documents during progress of the work. All documents of any description prepared by CONSULTANT shall become the property of the CITY at the completion of the project and upon payment in full to the CONSULTANT. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

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

Pursuant to CITY's Standard Conflict of Interest Code, Council Policy 7.3.7, CITY has determined that any individual performing services under this Agreement is required to file a Statement of Economic Interest (Form 700), Disclosure Category 1. See [www.fppc.ca.gov](http://www.fppc.ca.gov) for Form 700.

7. 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.

8. Compliance with Laws

- (a) CONSULTANT shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of CONSULTANT or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of CONSULTANT's employment practices and to all of CONSULTANT's activities as a provider of services to the City.
- (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.

9. 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.

10. Indemnity

CONSULTANT shall indemnify and hold harmless CITY and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of CITY.

11. Insurance

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "C."

12. CITY Representative

Mark Rogge, City Engineer, as the City Manager's authorized representative, 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.

13. CONSULTANT Representative

Cyrus Kianpour, Principal in Charge, 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.

14. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

To CITY: Mark Rogge, City Engineer  
Public Works Department  
CITY OF SUNNYVALE  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

To CONSULTANT: Cyrus Kianpour, Principal in Charge  
CSG Consultants, Inc.  
1700 S. Amphlett Blvd. 3<sup>rd</sup> Floor  
San Mateo, CA 94402

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. 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.

15. Assignment

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

16. Termination

If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) after written notification of failure to pay.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. 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 that point in time.

17. Entire Agreement; Amendment

This writing 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.

18. 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 OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

CSG CONSULTANTS, INC.  
("CONSULTANT")

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
\_\_\_\_\_  
Name and Title

By \_\_\_\_\_  
\_\_\_\_\_  
Name and Title

# EXHIBIT A

## SCOPE OF SERVICES

The City of Sunnyvale is looking to obtain timely and efficient professional services to augment the City's internal engineering design and construction forces. Depending upon workload fluctuations, it is desirable to have additional employees that can work alongside in-house staff on an as-needed basis to minimize response time, meet legal deadlines, and address community delivery expectations. In this way, the City can maintain its high level of responsiveness and customer service.

**DURATION OF SERVICES.** On-call support services are necessary for a period of up to ten and one half (10-1/2) months, commencing on or about August 11, 2010 and lasting through the end of Fiscal Year 2010-11 upon successful demonstration of exemplary contract performance. The City or Consultant reserves the right to terminate the agreement at any time with a 30-day written notice.

**SCOPE OF SERVICES.** Services to be provided by CSG Consultants may include civil engineering design support, project coordination, CIP administration, construction management and construction inspection for a variety of public works projects. The City reserves the right to add or delete any of these service categories from the scope of work to be provided at any time during the contract's duration.

Services are generally defined below, although not necessarily limited to, the areas of Engineering Design and Administration, Construction Management and Construction Inspection. Typical duties within these categories follow.

### Engineering Design and Administration

CSG Consultants shall assign a Principal Engineer to assist with Engineering Division design and administrative work efforts. The engineer shall report directly to the Assistant Public Works Director/City Engineer and perform duties in a staff-augmentation capacity, generally working independently and with little direction on internal work efforts that require a high level of responsibility and technical expertise. Other CSG employees, supervised by the Principal Engineer, may be utilized to complete assigned work in an efficient and expeditious manner. Typical duties and services to be provided include:

1. Perform initial design assessments, alternatives analysis, utility conflict analysis and preliminary design services. Investigate records and engineering data from the field or office, as necessary, to assist with the preparation of construction plans, specifications and estimates (PS&Es).
2. Manage municipal public works projects from the preliminary design stages through the completion of construction. Attend meetings, prepare minutes and other forms of correspondence, perform plan checking, prepare and review specifications and contract documents, coordinate with project stakeholders and outside agencies, perform constructability reviews, manage the bidding and project award process, provide design support during construction in the form of responses to RFI's, evaluation of submittals and review of progress payments.

3. Prepare PS&Es for use in the public bidding process, in accordance with the City's Standard practices. Process plans and specifications through other agencies for review and approvals corresponding to special funding programs and/or permits.
4. Participate in the technical review and updating of engineering standard plans, details, specifications, best practices and/or standard policies.
5. Review and approve infrastructure projects associated with development activity.
6. Provide City Council engineering support through the production of staff reports, exhibits, drawings, power point presentations, etc.
7. Perform other engineering related duties as required.

#### Construction Management

CSG Consultants shall assign a Principal Engineer as the Construction Manager to act as the City's agent during the construction of CIP projects and to be responsible for ensuring the completion of the construction by overseeing the contractor's activities. The Construction Manager shall also be responsible for ensuring that all work is built to the standards defined by the contract documents. Services may also include:

1. Communicating and coordinating with project participants including the City, the contractor, testing forces and regulatory or permitting agencies.
2. Monitoring and assessing the project's budget and providing cost control.
3. Tracking the project's progress against the schedule and contract duration.
4. Resolving through involvement of the City, as necessary, project issues that may cause the project's scope, cost or duration to vary.
5. Completing contract administration paperwork including, but not limited to; processing and reviewing RFI's, submittals, potential change orders, progress payments, potential claims, etc.
6. Supervising the construction inspection efforts.
7. Coordinating and participating in weekly progress meetings to discuss and resolve project issues.
8. Reviewing and ensuring the accuracy of the contractor's red-lined record drawings, preparing the final punch list and overseeing punch list item resolution.

#### Construction Inspection

The Inspector shall report to the Construction Manager and shall be responsible for observing, measuring and documenting the contractor's operations. Typical duties to be performed by the inspector include:

1. Fully understanding the requirements in the plans and specifications and maintaining an open dialog with the construction manager for clarifications as necessary.
2. Monitoring and coordinating operations with the contractor so that critical operations are observed.
3. Bringing unacceptable work or material to the attention of the contractor and if not resolved promptly, bringing the situation to the construction manager for resolution.
4. Issuing and following up on field orders and referring matters to the construction manager for interpretation and settlement if disputed.
5. Maintaining complete, up to date and accurate diaries and photo logs that reflect: weather conditions; contractor (and subcontractor) forces and equipment utilized; compliance with contract documents; work completed including the location, quantity and methods; testing results; communications with the contractor including instructions, suggestions and requests; instructions from the engineer; communications with the public or other agencies.
6. Reviewing construction staking.
7. Reviewing, measuring and calculating quantities for progress payments.

**PERSONNEL.** Available staff that CSG will utilize, as necessary, to complete the tasks envisioned during the contract duration include:

Principal in Charge	Cyrus Klanpour, P.E.; P.L.S.
Principal Engineer (Design & Admin. Support)	Merrill Buck, P.E.
Principal Engineer (Const. Management)	Ken Rachko, P.E.
Assistant Engineer / Office Engineer	Edrie de Los Santos, Michelle Chen Sydney Chow, Sindhi Mekala, Jennifer Fogle, Kaveh Forouhi
Project Inspectors	Ramon Bernardo, Saeid Mostafavi
Administrative Assistant:	Nazaneen Ashrafi

**COMPENSATION.** Consultant shall perform the Scope of Services described in this document on a time and materials basis in accordance with the attached, Standard 2010 Engineering Fees schedule.

# EXHIBIT B

## CITY OF SUNNYVALE

### PRICE PROPOSAL PROFESSIONAL SERVICES AGREEMENT

#### CSG CONSULTANTS, INC.

#### LEVEL OF EFFORT

Consultant services are needed to provide professional engineering services over an approximate duration of ten and a half (10-1/2) months (through the end of FY 2010-2011) to assist the Engineering Division with Capital Improvement Program Management and Construction Management Inspection and Administration. The following positions and levels of effort have been identified by the City based upon estimated needs to arrive at a not to exceed amount for professional services.

<u>Position</u>	<u>Duration of Services</u>	<u>Amount</u>
Principal Engineer	32 hours/week x 46 weeks @ \$175/hr.	\$ 257,600
Resident Engineer	40 hours/week x 46 weeks @ \$150/hr.	\$ 276,000
Associate Engineer	40 hours/week x 46 weeks @ \$120/hr.	<u>\$ 220,800</u>
<b>Total Not to Exceed Amount:</b>		<b>\$ 754,400</b>

#### BILLING RATES

<u>Classification</u>	<u>Hourly Rate</u>
Principal Engineer	\$175 per hour
Resident Engineer (Construction Manager)	\$150 per hour
Assistant Resident Engineer / Associate Engineer	\$120 per hour
Construction Inspector	\$110 per hour

Rates will remain effective through June 30, 2011.

Rates reflect and include home office and administrative costs and routine expenses such as local mileage, copying, fax, telephone, mail, in-house printing, software and computer usage, etc. CSG's fee is subject to an annual CPI adjustment at the beginning of each new fiscal year.

CSG invoices monthly for services provided the previous month. Clients will receive a detailed account of work performed.

## EXHIBIT C

### INSURANCE REQUIREMENTS FOR CONSULTANTS

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 and \$2,000,000 aggregate for bodily injury, personal injury and property damage. 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.
3. **Workers' Compensation** and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.
4. **Errors and Omissions** Liability Insurance appropriate to the Consultants Profession: \$1,000,000 per occurrence and \$2,000,000 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, 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.
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 affect 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 suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

### **Claims Made Coverage**

If the General Liability and/or Errors & Omissions coverages are written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Consultant must purchase an extended period coverage for a minimum of five years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City of Sunnyvale for review.

### **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 effecting 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.