Council Meeting: June 19, 2012

SUBJECT: Authorization to Amend an Existing Contract for Design Services for the Rehabilitation of Air Flotation Thickeners at the Water Pollution Control Plant (F1104-60)

BACKGROUND
Approval is requested to amend an existing contract with RMC Water and Environment (RMC) of San Jose for design services associated with the rehabilitation of the four Air Floatation Thickeners (AFTs) at the Water Pollution Control Plant to increase the total contract value by $75,400, from $403,100 to $478,500. The recommended increase is for additional design services related to repackaging construction bids for two AFTs.

DISCUSSION
The four Air Flotation Thickener units at the Water Pollution Control Plant (WPCP) are an integral part of the tertiary process in the treatment of wastewater. Each unit consists of a concrete clarifier tank 60' in diameter with a center mechanical column. The WPCP requires three functioning AFT units to efficiently process the amount of wastewater received by the facility. The fourth provides backup for repair and maintenance. Three of the AFT units were constructed in 1975. AFT #4 was constructed in 1982. All the units require full rehabilitation, preceded by engineering design and preparation of bid documents.

An initial rehabilitation design contract for all four units was awarded to RMC on April 8, 2008 (RTC No. 08-107), with the intent of ultimately awarding one construction contract for all four AFTs. Invitation for Bids No. F0904-90 for the rehabilitation of the units was released in June 2010. However, the lowest responsive and responsible bid exceeded the available project budget and the bids were subsequently rejected by Council on August 2010 (RTC No. 10-226). The bid documents were then repackaged to bid construction for two of the four tanks (AFTs #2 and #3), which Council awarded on March 8, 2011 (RTC No. 11-054). This allowed lessons learned on the renovation of the first two tanks to be applied to the next two.

Repackaging the bid documents for the remaining AFTs (#1 and #4) is ready to proceed. The additional costs to reassemble the design, prepare a second bid package, and provide construction management support for the project is $75,400.

Rehabilitation of the first two AFTs cost $1,853,800. Staff anticipates bids for the next two AFTs will be a similar amount. When costs for special inspection and commissioning are included, depending upon the results of construction bids, staff anticipates a budget modification to add approximately $400,000 will be necessary at the time of award of the construction contract. Staff will review the available funding at the time bids for construction are received.
FISCAL IMPACT
Total costs for this design contract will be $478,500, which consists of the original contract award of $403,100, and the proposed amendment of $75,400.

Funds for the additional design and associated services are available in Capital Project 825141 (Air Flotation Tank Rehabilitation).

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 authorize an Amendment to an existing contract with RMC Water and Environment, in substantially the same form as the attached draft, for design services for four Air Flotation Thickener at the Water Pollution Control Plant to increase the total contract value by $75,400 to a total of $478,500 for additional design services.

Reviewed by:

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

Reviewed by:

Kent Steffens, Director, Public Works

Reviewed by:

John Stubb豆an, Director of Environmental Services

Approved by:

Gary M. Luebbers
City Manager

Attachments
A. Draft Amendment to Consultant Services Agreement
B. Consultant Services Agreement
ATTACHMENT A
DRAFT

AMENDMENT TO CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND RMC WATER AND ENVIRONMENT TO DESIGN AND PREPARE CONSTRUCTION DOCUMENTS FOR THE REHABILITATION OF FOUR AIR FLOTATION THICKENERS AT THE WATER POLLUTION CONTROL PLANT

This Amendment to Consultant Services Agreement, dated ____________, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY") and RMC WATER AND ENVIRONMENT ("CONSULTANT").

WHEREAS, on April 23, 2008, CITY and CONSULTANT entered into a Consultant Services Agreement whereby CONSULTANT would perform professional services necessary for investigation, analysis, design, preparation of construction drawings and contract specifications, consultation, services during construction and other services for a project known as the Rehabilitation of Four Air Flotation Thickeners at the Sunnyvale Water pollution Control Plant

WHEREAS, the parties now agree that an Amendment to said Agreement is advisable;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AMENDMENT TO CONSULTANT SERVICES AGREEMENT:

1. Services by CONSULTANT – Replace first paragraph with the following:

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit “A” entitled “Scope of Work” and Exhibit “A-2” entitled “Scope and Fee for Preparation of bid Documents for AFT 1 and Modifications”. All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Marilyn Bailey to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONSULTANT.

2. Notice to Proceed/Completion of Services – Replace Paragraph (b) with the following:

2. (b) When CITY determines that CONSULTANT has satisfactorily completed the services defined in Exhibit “A” and Exhibit “A-2”, CITY shall give CONSULTANT written Notice of Final Acceptance,
and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has satisfactorily completed the Scope of Work (Exhibit “A”) and Scope and Fee for Preparation of Bid Documents for AFT 1 and Modifications (Exhibit “A-2”), and if so requested, CITY shall make this determination within fourteen (14) days of such request.

4. Payment of Fees and Expenses – Replace with the following:

4. Payment of Fees and Expenses

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit “B” entitled “Compensation Schedule” and the attached Exhibit “A-2” “Revised Fee”. All compensation will be based on monthly billings as provided in Exhibit ‘B’. Compensation will not be due until said detailed billing is submitted to CITY within a reasonable time before payment is expected to allow for normal CITY processing. An estimate of the percent of total completion associated with the various categories of the services shall be furnished by CONSULTANT with said billing. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. Compensation shall not exceed the amounts set forth in Exhibit “B” and Exhibit “A-2” for each phase. In no event shall the total amount of compensation payable under this Agreement exceed the sum of Four Hundred Seventy Eight Thousand Five Hundred and No/100 Dollars ($478,500.00) unless upon written modification of this Agreement. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707.

8. Standard of Workmanship – Replace second paragraph with the following:

8. Standard of Workmanship

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under the Scope of Work (Exhibit “A”) and Scope and Fee for Preparation of Bid Documents for AFT 1 and Modifications (Exhibit “A-2”) shall be of a quality acceptable to CITY. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar projects.
All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Agreement Amendment.

ATTEST: CITY OF SUNNYVALE ("CITY")

By ____________________________ By ____________________________
   City Clerk                  City Manager

APPROVED AS TO FORM: RMC WATER AND ENVIRONMENT
                      ("CONSULTANT")

By ____________________________ By ____________________________
   City Attorney                Name and Title
May 30, 2012

Craig Mobeck
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94099-3707

Subject: Sunnyvale Water Pollution Control Plant
Scope and Fee for Preparation of Bid Documents for AFT 1 and 4 Modifications

Dear Craig:

The City has asked RMC to provide a proposal for preparing bid documents to rehabilitate the two remaining AFTs (AFTs 1 and 4). It is our understanding that the City prefers using an approach similar to the approach previously used for preparing re-bid documents for AFTs 2 and 3. With this approach, the sheet numbering and cross-referencing system from the original design package is maintained, and items that are not included under the contract are simply crossed out with “Not in Contract” notations and other applicable notes.

Background

The Contract documents were originally prepared for modifications of four AFTs. The City opened Contractor bids for the construction of the AFT Improvements Project on June 30, 2010. These bids were based on RMC’s final design for rehabilitation of all four AFTs. After some internal discussion at the City, the City contacted RMC on August 16, 2010 to request that RMC modify the bid documents so the City could re-advertise the project and solicit bids for the following modified, reduced-cost project:

1) Base bid for rehabilitation of AFT 2.
2) Additive alternate (optional bid item) for rehabilitation of AFT 3.

The project with the modified/re-bid scope was advertised on December 17, 2010 and the Contract was awarded to Monterey Mechanical Co. After opening the bids, the City decided to exercise both base bid and additive alternative. Currently, the rehabilitation of AFTs 2 and 3 is under construction.

The original scope of work for design consulting services is described in a contract between the City and RMC dated April 23, 2008 (City purchase order #PO-002301 dated April 25, 2008). The modified/re-bid contract scope is described in the letter of amendment dated September 3, 2010. RMC was authorized for an additional budget under the same purchase order #PO-002301 in the authorization letter dated September 20, 2010.
Proposed Scope of Work for AFTs 1 and 4

Attachment A includes the proposed Scope of Work to prepare bid documents for modifications to AFT’s 1 and 4. The scope is based on an approach similar to that previously used for preparing re-bid documents for AFTs 2 and 3, i.e., the sheet numbering and cross-referencing system from the original design package is maintained, and items that are not included under the contract are crossed out with “Not in Contract” notations and other applicable notes. The scope of services includes preparation of drawings and specifications for the bid document, services during bidding, engineering services during construction, and project management.

As shown in Attachment B, the budget for this work is $75,400 which includes $31,400 for the design revisions, $37,700 for services during construction, and $6,300 for project management and QA/QC.

If you have any questions or comments regarding this proposal, please do not hesitate to contact me at (415) 321-3400 or John Thayer at (310) 566-6467. We appreciate the opportunity to be of service.

Sincerely,

Marilyn Bailey, P.E.
Vice President

Attachments:
Attachment A – Scope of Services
Attachment B -- Fee Schedule
**Scope of Work**

**Task 1 – Drawing Revisions**

This task consists of notating the original bid drawings as follows:

- Line-out of selected details
- Line-out revisions of quantities
- Addition of drawing notes
- Line-out revisions to details where applicable
- Line-out revisions to cover sheet

These drawing revision activities are applicable to the civil, demolition, mechanical, electrical, instrumentation, and structural improvements.

**Task 2 – Specification Revisions**

This task consists of notating the original bid specifications including:

- Line-out revision of quantities
- Line-out revisions of specification text pertaining to sequencing
- Deletion of text applicable to AFT # 2 and 3
- Modification of bid form
- Line-out revisions of front end specifications
- Additional specification revisions

These specification revision activities are applicable to the following drawing categories: civil, demolition, mechanical, electrical, instrumentation, and structural.

**Task 3 – Response to Requests for Information During Bid Period**

RMC and our subconsultant TJC and Associates will provide up to 15 responses (10 from RMC; 5 from TJC) to requests for information during the bid period.

**Task 4 – Engineering Services During Construction**

Services during construction will include the following subtasks:

- Participation in the Pre-construction meeting
- Review and respond to Requests for Information.
- Review shop drawing submittals pertaining to items designed by the Engineer.

**Task 5 – Project Management**

The Project management activities shall include the following:

- Preparation of monthly invoices and progress reports.
- Internal quality assurance/quality control (QA/QC) activities, which shall include detailed review of project design documents, drawings and calculations.

**Assumptions**

1. There will be two submittals of the revised plans and specs: A City Review Draft and A Final Submittal. Following submittal of the City Review Draft, RMC shall respond to a single consolidated set of written review comments from the City. At each submittal, RMC shall provide the City three paper copies of the specifications and three full-size paper drawing sets. The City will provide all additional bidding sets and mylar sets. RMC and the City will
coordinate the desired format for specifications headers, footers, numbering, and pagination prior to submittal of the City Review Draft, to avoid re-formatting specifications in the late stages of the project. If it is necessary to re-paginate the specs following the final submittal, the City will handle the re-pagination.

2. The revised bid package that RMC produces will be applicable to rehabilitation of AFT 1 and AFT 4 only.

3. The base scope includes only improvements that were shown in the original bid package, or addendums to the original bid package. Additional improvements associated with implementing a dedicated recycled water production train can be designed for an additional scope and fee.

4. The scope contains no face-to-face meetings between RMC and the City. If RMC needs clarification from the City on which portions of the original bid package to retain, RMC will make the necessary communications through e-mail and by telephone.

5. The scope assumes that the City will advise RMC which structural improvements will remain in the bid package.

6. The sheet numbering will remain the same, and there will be no removal of drawing sheets. All of the original specifications will remain in the revised bid package, and revisions to the specifications will be shown as line-out revisions only.

7. To maintain an appropriate Engineering standard of care, RMC will add notes to the cover sheet explaining that the original drawings were created for a prior bid dated June 30, 2010, and that line-outs and “Not in Contract” notations were requested by the City for the purposes of creating a revised bid package.

8. The City desires to specify the same equipment as used for the AFTs #2 and 3 rehabilitation.

9. Record drawing for AFT’s 1, 2, 3, and 4 will be consolidated into one set following the completion of rehabilitation of AFT 1 and 4. Therefore, no additional budget is anticipated at this time.

10. RMC will incorporate construction changes to the design of AFTs 2 & 3 into the design documents for AFTs 1 & 4, where applicable.

11. AFT 1 and 4 will be bid as a single package without bid alternates.
City of Sunnyvale Water Pollution Control Plant
Preparation of Bid Documents for AFTs 1 and 4 Modifications - Revised Fee

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<th>Project Engineer</th>
<th>CADD</th>
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Notes:
1. The individual hourly rates include salary, overhead and profit.
2. Other direct costs (ODCs) such as reproduction, delivery, mileage (rates will be those allowed by current IRS guidelines), and travel expenses, will be billed at actual cost.
3. Cost Estimate is removed from scope of work per City's request.
4. Task 1 was rebudgeted and the amount of effort was reduced by 10 hours.
CONSULTANT SERVICES AGREEMENT
BETWEEN CITY OF SUNNYVALE AND RMC WATER AND ENVIRONMENT
TO DESIGN AND PREPARE CONSTRUCTION DOCUMENTS FOR THE
REHABILITATION OF FOUR AIR FLOTATION THICKENERS AT THE
WATER POLLUTION CONTROL PLANT

THIS AGREEMENT, dated July 23, 200X, is by and
between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and RMC
WATER AND ENVIRONMENT ("CONSULTANT").

WHEREAS, CITY desires to secure environmental engineering consulting
services to design and prepare construction documents for the rehabilitation of four Air
Floation Thickeners (AFT) at the City's Water Pollution Control Plant (WPCP), 1444
Borregas Avenue, Sunnyvale, CA 94089; and

WHEREAS, CONSULTANT represents that it, and its sub-consultants, if any,
possess the professional qualifications and expertise to provide the required services
and are licensed by the State of California to practice engineering in the required
disciplines;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" entitled
"Scope of Work." All exhibits referenced in this Agreement are attached hereto and are
incorporated herein by reference. To accomplish that end, CONSULTANT agrees to
assign Marilyn Bailey to this project, to act in the capacity of Project Manager and
personally direct the professional services to be provided by CONSULTANT.

Except as specified in this Agreement, CONSULTANT shall furnish all technical
and professional services, including labor, material, equipment, transportation,
supervision and expertise to perform all operations necessary and required to
satisfactorily complete the services required in this Agreement.

2. Notice to Proceed/Completion of Services

(a) CONSULTANT shall commence services upon receipt of a Notice to
Proceed from CITY. Notice shall be deemed to have occurred three (3)
calendar days after deposit in the regular course of the United States mail.
(b) When CITY determines that CONSULTANT has satisfactorily completed the
services defined in Exhibit "A," CITY shall give CONSULTANT written
Notice of Final Acceptance, and CONSULTANT shall not incur any further
costs hereunder. CONSULTANT may request this determination of
completion when, in its opinion, it has satisfactorily completed the Scope of
Work (Exhibit "A"), and if so requested, CITY shall make this determination
within fourteen (14) days of such request.

3. Project Schedule

The Project Schedule is set forth in the attached Exhibit "A-1."
4. Payment of Fees and Expenses

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule." All compensation will be based on monthly billings as provided in Exhibit "B." Compensation will not be due until said detailed billing is submitted to CITY within a reasonable time before payment is expected to allow for normal CITY processing. An estimate of the percent of total completion associated with the various categories of the services shall be furnished by CONSULTANT with said billing. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. Compensation shall not exceed the amounts set forth in Exhibit "B" for each phase. In no event shall the total amount of compensation payable under this agreement exceed the sum of Four Hundred Three Thousand One Hundred and NO/100 Dollars ($403,100.00) unless upon written modification of this Agreement. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94086-3707.

5. No Assignment of Agreement

CONSULTANT bind themselves, their partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of CITY. However, claims for money due to or to become due to CONSULTANT from CITY under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to CITY. In case of the death of one or more members of CONSULTANT's firm, the surviving member or members shall complete the services covered by this Agreement. Any such assignment shall not relieve CONSULTANT from any liability under the terms of this Agreement.

6. Consultant is an Independent Contractor

CONSULTANT is not an agent or employee of CITY but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed by CONSULTANT in connection with this Agreement will be employees of CONSULTANT and not employees of CITY in any respect. CONSULTANT is responsible for obtaining statutory Workers' Compensation coverage for its employees.

7. Consultant's Services to be Approved by a Registered Professional

All reports, cost estimates, plans and other documents which may be submitted or furnished by CONSULTANT shall be approved and signed by a qualified registered professional in the State of California. The title sheet for calculations, specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation.
8. **Standard of Workmanship**

CONSULTANT represents and maintains that it is skilled in the professional calling necessary to perform the services and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations reports and other documents furnished under the Scope of Work (Exhibit "A") shall be of a quality acceptable to CITY. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar projects.

9. **Responsibility of CONSULTANT**

CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under this Agreement. Neither CITY's review, acceptance nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT's negligent performance of any of the services furnished under this Agreement.

Any acceptance by CITY of plans, specifications, calculations, construction contract documents, reports, diagrams, maps and other material prepared by CONSULTANT shall not, in any respect, absolve CONSULTANT for the responsibility CONSULTANT has in accordance with customary standards of good engineering practice in compliance with applicable Federal, State, County and/or municipal laws, ordinances, regulations, rules and orders.

10. **Right of CITY to Inspect Records of CONSULTANT**

CITY, through its authorized employees, representatives, or agents, shall have the right, at any and all reasonable times, to audit the books and records including, but not limited to, invoices, vouchers, canceled checks, time cards of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years from the date of final payment to CONSULTANT or for any longer period required by law, sufficient books and records in accordance with generally accepted accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT. Any expenses not so recorded shall be disallowed by CITY.

11. **Confidentiality of Material**

All ideas, memoranda, specifications, plans, calculations, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall
be held confidential by CONSULTANT and shall not, without the prior written consent of 
CITY be used for any purposes other than the performance of the Project services, nor 
be disclosed to an entity not connected with the performance of the Project services.
Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is 
or becomes generally known to the related industry shall be deemed confidential. 
CONSULTANT shall not use CITY's name, insignia or distribute exploitative publicity 
portaining to the services rendered under this Agreement in any magazine, trade paper, 
newspaper or other medium without the express written consent of CITY.

12. No Pledging of CITY’s Credit

Under no circumstances shall CONSULTANT have the authority or power to 
pledge the credit of CITY or incur any obligation in the name of CITY.

13. Ownership of Material

All material, including information developed on computer(s), which shall include, 
but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, 
estimates, specifications, proposals, tests, maps, calculations, photographs, reports and 
other material developed, collected, prepared or caused to be prepared, under this 
Agreement shall be the property of CITY, but CONSULTANT may retain and use copies 
thereof.

CITY shall not be limited, in any way, in its use of said material, at any time, for 
work associated with Project. However, CONSULTANT shall not be responsible for 
damages resulting from the use of said material for work other than Project, including, 
but not limited to the release of this material to third parties for work other than on 
Project.

14. Hold Harmless/Indemnification

To the extent permitted by law (including, without limitation, California Civil Code 
section 2782.6), CONSULTANT agrees to indemnify, defend 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 to the extent arising out of any negligence, recklessness or willful misconduct 
of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any 
officer, agent or employee thereof in relation to CONSULTANT's performance under 
this Agreement. Such defense and indemnification shall not apply in any instance of 
and to the extent caused by the sole negligence, recklessness or willful misconduct of 
CITY, its officers, employees, agents or representatives.

15. Insurance Requirements

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 and/or endorsements as specified in Exhibit "C."

16. No Third Party Beneficiary

This Agreement shall not be construed or deemed to be an agreement for the 
benefit of any third party or parties and no third party or parties shall have any claim or 
right of action hereunder for any cause whatsoever.
17. 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 by commercial courier; addressed as follows:

To CITY: Lorrie Gervin
Environmental Services Manager
Department of Public Works
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: RMC Water and Environment
Attn: Marilyn Bailey
2280 North First Street, Suite 212
San Jose, CA 95131

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, by 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 three 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.

18. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

19. Amendments

No alterations or changes to the terms of this Agreement shall be valid unless made in writing and signed by both parties.

20. Integrated Agreement

This Agreement embodies the agreement between CITY and CONSULTANT and its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

21. Conflict of Interest

CONSULTANT certifies that to the best of its knowledge, no CITY employee or officer of any public agency interested in this Agreement has any pecuniary interest in the business of CONSULTANT and that no person associated with CONSULTANT has
any interest that would conflict in any manner or degree with the performance of this Agreement.

22. California Agreement

This Agreement has been entered into in the State of California and this Agreement shall be governed by California law.

23. Records, Reports and Documentation

CONSULTANT shall maintain complete and accurate records of its operation, including any and all additional records required by CITY in writing. CONSULTANT shall submit to CITY any and all reports concerning its performance under this Agreement that may be requested by CITY in writing. CONSULTANT agrees to assist CITY in meeting CITY's reporting requirements to the state and other agencies with respect to CONSULTANT's work hereunder. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement.

24. Termination of Agreement

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) days from the date payment is due.

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.

25. Subcontracting

None of the services covered by this Agreement shall be subcontracted without the prior written consent of CITY. Such consent may be issued with notice to proceed if subcontract consultants are listed in the project work plan.

26. Fair Employment

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background or marital status, in violation of state or federal law.

27. Changes

CITY or CONSULTANT may, from time to time, request changes in the terms and conditions of this Agreement. Such changes, which are mutually agreed upon by CITY and CONSULTANT, shall be incorporated in amendments to this Agreement.
28. **Other Agreements**

This Agreement shall not prevent either Party from entering into similar agreements with others.

29. **Severability Clause.**

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

30. **Captions**

The captions of the various sections, paragraphs and subparagraphs, of the contract are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

31. **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.

32. **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:**

By [Signature]

City Clerk

**CITY OF SUNNYVALE ("CITY")**

By [Signature]

City Manager

**RMC Water and Environment ("CONSULTANT")**

By [Signature]

Randall Ramos, President

Name/Title

**APPROVED AS TO FORM:**

By [Signature]

City Attorney

[Signature]

Name/Title
Exhibit "A"

Design and Preparation of Construction Documents
Rehabilitation of Four Air Flotation Thickeners
Sunnyvale Water Pollution Control Plant

Project Background

The four air flotation tanks (AFT) are an important component of the Water Pollution Control Plant's (WPCP) treatment process. Their role in removing algae from process stream is critical to the ability of the WPCP to meet its discharge requirements. Three of the AFT's have been in operation for over 30 years and the fourth has been operating for 25 years. They suffer from structural, mechanical, and electrical degradation from long years of hard service and are in need of reconditioning and rehabilitation to enable their continued operation.

This project includes four tasks as follows:

Task 1 Project Definition
Task 2 Final Design
Task 3 Engineering Services During Construction:
Task 4 Project Management:

The detailed scope of work and deliverables for these tasks are described below.

Scope of Work

Task 1. Project Definition
Subtask 1.1 Kick-off Workshop

RMC will conduct a workshop with WPCP management and staff to reach consensus on project goals and identify existing sources of information.

Deliverables: Condition Assessments for the AFT facilities

Subtask 1.2 Condition Assessment

RMC will evaluate the condition of mechanical, structural, electrical, and control components of the AFT process, and perform a seismic evaluation of the AFT tanks. Condition assessment of each tank will occur sequentially, one at a time, after WPCP has emptied and cleaned each tank.

Deliverables: Condition Assessments for the AFT facilities

Subtask 1.3 Preliminary Workshop

RMC will conduct a preliminary workshop with City management and with senior operators to obtain input to the condition assessment and identification of project components.

Deliverables: Workshop agenda and meeting minutes

Subtask 1.4 Preliminary Project Identification
Exhibit A
Scope of Work

RMC will use the results of the condition assessments and preliminary workshop to identify potential project components and to prepare cost estimates for each item.

**Deliverables:** Preliminary project component list and associated cost estimates

**Subtask 1.5 Project Refinement Workshop**

RMC will present the results of the Preliminary Project Identification at a workshop with WPCP management. The goal of the workshop is to compare the estimated costs with the available CIP budget and determine which project components will be included in the final project.

**Deliverables:** Workshop agenda and meeting minutes

**Subtask 1.6 Project Definition Technical Memorandum**

After consensus has been reached on the project components, RMC will prepare the draft Project Definition TM. The TM will include the following information:

- Results of Condition Assessment
- Project Goals
- Recommended Project Components
- Cost Estimate
- Implementation Schedule
- Appendix:
  - Condition Assessments
  - Workshop meeting minutes

After submittal of the draft TM and review by the City, RMC will conduct a review workshop with WPCP staff to discuss the City's review and obtain final review comments. RMC will then incorporate the comments into a final TM that will serve as the basis of final design.

**Deliverables (6 copies each):**

- Draft TM
- Workshop agenda and minutes
- Final TM

**Task 2. Final Design**

Definition of the project components for final design will not be defined until after completion and approval of the Project Definition TM. Therefore, the budget for the final design is based on the following assumptions:

- The plans and specifications will be based on the project components identified in the final Project Definition TM.
- The construction cost of the project will be approximately $1.5 million.
Exhibit A
Scope of Work

- For all review submittals, the WPCP staff will combine their review comments into single marked-up set of drawings and specifications. Whenever possible, conflicts between the WPCP internal review comments will be reconciled before the review comments are submitted to the consultant.

- The bid documents will use the City’s General Conditions and RMC Division 1 specifications.

- The final design does not include seismic upgrade of the facilities. The need for, and the nature of, seismic upgrades cannot be determined until after the Condition Assessments are completed. If seismic upgrades are determined to be needed based on the Condition Assessments, the scope of the seismic upgrade design would be negotiated as an additional scope item.

- The existing electrical building is assumed to have adequate structural integrity and mechanical/electrical support systems. Analyses of the existing electrical building are not included.

- Project will include new controls based on programmable logic controls (PLCs) and software controls. Duplication of the existing “hardwired/relay” logic will not be required. New controls will be integrated into the plant’s existing Allen-Bradley PLC network.

- All four AFTs are assumed identical for the purposes of process-mechanical-electrical-control design elements. “Typical” design approaches will be used for establishing the level of detail in the Bid Documents.

- Clear corridors are available for routing new underground electrical ductbanks to each of the AFTs from the existing electrical building.

- P&IDs will present process piping, instrumentation, and controls. Software controls implemented in PLCs will not be detailed on the P&IDs; rather written control descriptions shall be provided in the Bid Documents for communicating control system requirements.

- City will print and distribute the final bid documents.

- RMC’s scope of work does not include preparation of California Environmental Quality Act (CEQA) documentation or preparation of other City of Sunnyvale permitting requirements.

Subtask 2.1 30% Design Submittal:

The 30% submittal will include the following:

- Major plans showing structural and mechanical elements of the project
- Electrical single line diagrams and major electrical distribution equipment elevations
- P&IDs showing equipment tagging and flow schematics. The 30% P&IDs will include process piping, major process equipment, field instrumentation, and valves. 30% P&IDs will not include control interfaces.
- Draft specifications for major equipment
Exhibit A
Scope of Work

- Draft corrosion specifications including concrete lining, metallic coatings
- Draft AFT control description narratives
- Updated implementation plan that identifies required permits, time needed for permits, shutdown restrictions, and sequencing constraints
- Updated construction cost estimate

This task includes two workshops with the WPCP staff.

**30% Workshop 1:** At the beginning of the review period, the RMC team will give a design presentation to the WPCP staff to describe the project components, the implementation schedule, and the cost estimate.

**30% Workshop 2:** After the WPCP has completed their review of the 30% submittal, RMC will conduct a workshop with the WPCP staff to discuss their comments. Response to comments will be incorporated into the 60% design submittal

**Deliverables (6 copies each):**
- Half size copies of drawings
- Specifications, implementation schedule, and updated cost estimate

Subtask 2.2 60% Submittal

The 60% submittal will include major plans, sections, and specifications at the mid-point of design, an updated implementation schedule, and updated construction cost estimate. After the WPCP has completed their review of the 60% submittal, RMC will conduct a workshop with the WPCP staff to discuss their comments. Response to comments will be incorporated into the 90% design submittal.

**Deliverables:** (6 copies each)
- Half size copies of drawings
- Specifications, implementation schedule, and updated cost estimate

Subtask 2.3 90% Submittal

The 90% submittal will include all drawings and all specifications for final review by the WPCP. It is expected that this submittal will be complete except for incorporation of final comments from the WPCP. After the WPCP has completed their review of the 90% submittal, RMC will conduct a workshop with the WPCP staff to discuss their comments. Response to comments will be incorporated into the 100% design submittal

**Deliverables (6 copies of each):**
- Half size copies of drawings
- Specifications
- Project Schedule
- Engineer's estimate of costs
Exhibit A

Scope of Work

- Design calculations
- Structural check calculations
- List of submittals expected during construction

Subtask 2.4 100% Submittal

The 100% submittal will incorporate review comments from the 90% submittal into the final bid documents.

Deliverables:
- Full-size Mylars of all drawings (one copy)
- Camera-ready half-size drawings (one copy)
- Camera-ready specifications (one copy)
- Final Engineer’s estimate of costs
- Documentation of Internal QA/QC checks
- Electronic files of drawings and specifications (.pdf format)

Task 3. Engineer’s Services During Construction

Services during construction will include the following implemented for those design elements included in the Bid Documents:

Subtask 3.1 Bid Phase Services
- Attendance at pre-bid conference
- Assistance to City in response to bidder’s inquiries and preparation of addenda. It is assumed that the City will distribute the bid documents, maintain the plainholder’s list, and be the initial contact for bidders’ inquiries.

Subtask 3.2 Construction Phase Services
- Participation in the Pre-construction meeting
- Attendance at six construction coordination meetings
- Conduct four site visits at request of City’s Construction Manager for general observation of construction activities
- Review and respond to Requests for Information
- Review shop drawing submittals pertaining to items designed by the Engineer.

Subtask 3.3 Record Drawings
- Prepare the project record drawings based on mark-ups provided by the City’s construction manager. (One set of full-size mylars, one camera-ready half-size set)

Task 4. Project Management

RMC will provide project management to monitor Engineer’s activities, schedule, and budgets on the project. The Project Management activities will include the following:
Exhibit A  
Scope of Work

Subtask 4.1 Project Management

- Preparation of monthly invoices by task and by individual.
- Preparation of monthly progress report describing specific accomplishments during the reporting period, problems encountered or anticipated, work scheduled for the next reporting period, and cost report.
- Up to four progress meetings with the WPCP, in addition to the workshops identified in other tasks, to discuss upcoming work activities, identify and resolve project issues, obtain endorsement for the design decisions.

Subtask 4.2 Quality Assurance/Quality Control

RMC and its subconsultant, TJC and Associates, will provide internal quality assurance and quality control (QA/QC) activities which will include detailed review of project design documents, drawings, and calculations. Documentation of the QA/QC activities will be included as part of the 100% submittal.

Project Schedule

The estimated project durations of the major project stages are as follows:

Project Definition: Approximately four months after Notice to Proceed. The schedule assumes that the AFT’s will be evaluated sequentially, and that there will be a one week lag time between evaluations to allow the WPCP staff to take the next basin out of service.

Final Design: Approximately six months after approval of the Project Definition. The schedule includes three review submittals at the 30%, 60%, and 90% completion points and includes three weeks City review period per submittal.

Construction Services: The construction period is not shown on the attached project schedule so that the details of the Project Definition and Final Design schedule can be more easily seen. The overall construction period is estimated to take 14 to 16 months which includes:

- Six months for contract award, shop drawing preparation/review/approval, and equipment fabrication
- Two months of construction per AFT, for a total of eight months
- Project punch-list, close-out, and record drawings
## Project Schedule

**San Jose WPCP**  
Air Polutrient Thickener Rehabilitation  
Design Phase Schedule (Construction Phase not shown)

### Table

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### Gantt Chart

The Gantt chart illustrates the timeline for each task, showing the start and finish dates for each phase of the project. The chart is color-coded to indicate the status of each task, with green indicating completed tasks, yellow indicating ongoing tasks, and red indicating delayed tasks.
# Cost Proposal for
Rehabilitation of Four Air Flotation Thickeners at the Sunnyvale Water Pollution Control Plant

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**Total Cost:** $417,406
EXHIBIT “C”
INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the Agreement 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 CONSULTANT, its 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.

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 CONSULTANT’s profession: $1,000,000 per occurrence.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by CITY. 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. CITY, its officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of CONSULTANT; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, 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 2782 of the Civil Code.

2. For any claims related to this project, CONSULTANT's insurance shall be primary. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents and volunteers shall be excess of 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 CITY, its officers, officials, employees, agents or volunteers.

4. 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 CITY.

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 CITY.

Verification of Coverage

CONSULTANT shall furnish to CITY original Certificate(s) of Insurance and endorsements effecting the coverage required. The Certificate(s) shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by CITY prior to commencement of work.