

**AGREEMENT FOR PROFESSIONAL CONSTRUCTION ENGINEERING
SUPPORT SERVICES WITH MOTT MACDONALD
FOR THE 1740 ROLLINS ROAD AND 842 COWAN ROAD PUMP STATION
UPGRADES PROJECT**

CITY PROJECT NOS. 83390 & 84820

THIS AGREEMENT is entered into this _____ day of _____, 2020, by and between the City of Burlingame, State of California, herein called the "City", and **MOTT MACDONALD** engaged in providing **PROFESSIONAL CONSTRUCTION ENGINEERING SUPPORT** services herein called the "Consultant".

RECITALS

- A. The City is considering conducting activities for consultant engineering services for engineering construction support services for the 1740 Rollins Road and 842 Cowan Road Pump Station Upgrades Project, City Project Nos. 83390 & 84820.
- B. The City desires to engage a professional engineering consultant to provide engineering construction support services because of Consultant's experience and qualifications to perform the desired work, described in Exhibit A.
- C. The Consultant represents and affirms that it is qualified and willing to perform the desired work pursuant to this Agreement.

AGREEMENTS

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

- 1. Scope of Services. The Consultant shall provide professional engineering construction support services such as review submittals, review design changes, meet with City staff and construction management consultant for construction progress meetings, and as detailed in "Scope of Services" of the attached Exhibit A of this agreement.
- 2. Time of Performance. The services of the Consultant are to commence upon the execution of this Agreement with completion of all work by January 31, 2022.
- 3. Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws.

Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Burlingame business license.

4. Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
5. Information/Report Handling. All documents furnished to Consultant by the City and all reports and supportive data prepared by the Consultant under this Agreement are the City's property and shall be delivered to the City upon the completion of Consultant's services or at the City's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the City to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the City without the written consent of the City before such release. The City acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and City's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at City's risk, unless Consultant expressly consents to such use in writing. City further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.
6. Compensation. Compensation for Consultant's professional services shall not exceed \$125,384; and payment shall be based upon City approval of each task.

Billing shall include current period and cumulative expenditures to date and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for City review, even if only in partial or draft form.

7. Availability of Records. Consultant shall maintain the records supporting this billing for not less than three (3) years following completion of the work under this Agreement. Consultant shall make these records available to authorized

personnel of the City at the Consultant's offices during business hours upon written request of the City.

8. Project Manager. The Project Manager for the Consultant for the work under this Agreement shall be Thomas Grau, Principal Project Manager.
9. Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the City.
10. Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

To City: Mahesh Yedluri
Senior Civil Engineer
City of Burlingame
501 Primrose Road
Burlingame, CA 94010

To Consultant: Thomas Grau
Principal Project Manager
Mott MacDonald
180 Promenade Circle, Suite 300
Sacramento, CA 95834

or personally delivered to Consultant to such address or such other address as Consultant designates in writing to City.

11. Independent Contractor. It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the City. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to City employee(s). With prior written consent, the Consultant may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement.

Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters

at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

12. Conflict of Interest. Consultant understands that its professional responsibilities is solely to the City. The Consultant has and shall not obtain any holding or interest within the City of Burlingame. Consultant has no business holdings or agreements with any individual member of the Staff or management of the City or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the City in the subject of this Agreement, and it shall immediately disassociate itself from such an interest should it discover it has done so and shall, at the City's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify City of this employment relationship, and shall, at the City's sole discretion, sever any such employment relationship.
13. Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.
14. Insurance.
 - A. Minimum Scope of Insurance:
 - i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: One million dollars (\$1,000,000) combined single limit per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury, personal injury and

property damage in a form at least as broad as ISO Occurrence Form CG 0001.

- ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than two million dollars (\$2,000,000) each claim/aggregate sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.
- iv. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

B. General and Automobile Liability Policies:

- i. The City, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. The endorsement providing this additional insured coverage shall be equal to or broader than ISO Form CG 20 10 11 85 and must cover joint negligence, completed operations, and the acts of subcontractors. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be endorsed to be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the City, its officers, officials, employees or volunteers

shall be excess of the Consultant's insurance and shall not contribute with it.

- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.

D. All Coverages: Each insurance policy required in this item shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice by mail, has been given to the City (10 days for non-payment of premium). Current certification of such insurance shall be kept on file at all times during the term of this agreement with the City Clerk.

E. Acceptability of Insurers: Insurance is to be placed with insurers with a Best's rating of no less than A:VII and authorized to do business in the State of California.

F. Verification of Coverage: Upon execution of this Agreement, Contractor shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City. All certificates and endorsements are to be received and approved by the City before any work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

15. Indemnification. To the fullest extent permitted by law, Consultant shall save, keep and hold harmless indemnify and defend the City, its officers, employees, authorized agents and volunteers from all damages, liabilities, penalties, costs, or

expenses in law or equity, including but not limited to attorneys' fees, that may at any time arise, result from, relate to, or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant. This provision shall not apply if the damage or injury is caused by the sole negligence, active negligence, or willful misconduct of the City, its officers, agents, employees, or volunteers.

16. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
17. Governing Law. This Agreement, regardless of where executed, shall be governed by and construed under the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of San Mateo.
18. Termination of Agreement. The City and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen (15) days written notice of termination. In the event of termination, the Consultant shall deliver to the City all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, City shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the City bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
19. Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the City and the Consultant.
20. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between the City and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date indicated on page one (1).

City of Burlingame

“Consultant”

By _____
Syed Murtuza
Public Works Director

Mott MacDonald
Print Name:
Title:

Approved as to form:

City Attorney – Kathleen Kane

ATTEST:

City Clerk - Meaghan Hassel-Shearer

Exhibit “A”

**Proposed Scope of Engineering Services During Construction
May 2020**

**City of Burlingame, California
1740 Rollins Road and 842 Cowan Road Pump Station Upgrades
City Project Nos. 84820 & 83390**

Project Understanding and Overview

Mott MacDonald (MM) with Cannon Corporation acting as our subconsultant will provide Engineering Services During Construction for the upgrading of the City of Burlingame’s (the City) stormwater and sewage pumping stations as prescribed in the Contract Documents for the 1740 Rollins Road & 842 Cowan Road Pump Station Upgrades dated March 2020. Mott MacDonald served as prime design consultant with Cannon Corporation providing the detailed design for the electrical, instrumentation, and structural aspects of the pump station upgrades. Our two firms, with MM again serving as prime consultant, propose to provide engineering services during construction (ESDC) for the work disciplines which each firm was responsible for during the design phase.

It is our understanding that the City will retain third-party firms to provide Construction Management and Field Inspection services as well as miscellaneous materials testing and compaction inspection. MM will coordinate with the City and the Construction Management/Inspection firm to provide the following scope of services on an as-requested basis during the course of the construction phase of the project.

The contract completion time for the project is 365 working days, approximately 17 calendar months.

Based upon similar projects, MM has included the following general scope items in this proposal:

- Preconstruction Phase Services
- Construction Phase Services
- Post Construction Phase Services

Proposed Tasks

The proposed scope of services will include the tasks outlined within this section.

Preconstruction Phase

Document Review and Processing Procedures

MM's Document Control System (DCS) will be used on this Project and incorporate existing procedures which the City uses to manage public works construction projects. Where the City already has forms in use, these will be incorporated into the system. The DCS will utilize an electronic database and incorporate electronic transmission of documents wherever possible.

Preconstruction Conference

It is anticipated that Mott MacDonald will attend the preconstruction conference. The meeting will be organized and chaired by the City and the third-party Construction Management/Inspection firm.

A. Construction Phase

Submittals/Requests for Information

The Contract requires the submission of various types of submittals. The work to which each applies cannot be started until the submittal has been reviewed. This process has the potential to delay the work if the submittal is not received in a timely fashion, is incomplete, or fails to meet the specification. To ensure no significant delay in this area, MM will track a full schedule of what submittals are required under the Contract. The Contractor will be responsible for preparing their own master list of submittals. The submittal schedule will be coordinated with the Contractor's construction schedule so that sufficient time is allowed for the review process.

RFIs will be handled similarly. RFIs regarding the design intent or suggested changes with the potential to impact design, will be reviewed by the design team who will issue responses. Others will be dealt with at the site by the Contractor and Construction Management firm. An RFI log will be maintained and updated regularly. Should the response to an RFI appear to have the potential to impact the contract schedule or cost, the issue will be immediately addressed with the City. Where appropriate, alternatives will be suggested and explored. Twenty-five (25) RFI responses are included in the proposed budget.

Submittals will be checked to ensure that they are complete and contain the correct references before being entered into the system. Thereafter, their progress through the system will be tracked to keep appropriate parties aware of the submittal's status and the need to maintain schedule. The submittals will be reviewed for conformance with the design. Sixty (60) submittal reviews (including resubmittals) are included in the proposed budget.

MM will be mindful of the need to meet the contractual obligations for return of submittal and RFI documents. Wherever possible, we will attempt to expedite the response so that the Contractor has the maximum time at his disposal to process the information provided and to factor it into his schedule. Where necessary, responses to submittals and RFIs will be formalized with a directive such as a change notice or field instruction if there are implications to the scope of work.

Under the terms of the contract, notification of any changes or potential changes are required to be given by the Contractor. When requested, MM will coordinate with the City and then respond on both the condition cited for the request and possible impacts on the Contractors' operations. In this manner, information will be gathered that will allow for a determination of the merit of the request and quantification of the Contractors' losses, if any. MM will make a preliminary assessment of the situation to identify whether additional resources or measures will be necessary for the process. These might include such things as testing for hazardous waste or additional compaction testing. Issues that have the potential to impact the time and cost of the Project will be given issue status and be addressed. Assistance with evaluation and response to four (4) Change Order Requests are included in the proposed budget.

Miscellaneous Meetings and Site Visits

MM will attend miscellaneous site visits and construction progress meetings on an as-requested basis during the course of the construction project when needed to respond to questions on design intent, assist in resolving alleged changed conditions, and for similar unanticipated conditions. The meetings will be organized and chaired by the City and the third-party Construction Management/Inspection firm. Four (4) miscellaneous progress meetings and sixteen (16) monthly site visits are included in the proposed budget.

Document Control

The Document Control System (DCS) described in the Pre-construction Phase will include a filing system. This will also acknowledge existing protocol within the City. Files will be maintained at MM's San Jose office for reference.

B. Construction Completion and Closeout

Preparation of As-built Plans

The Contractor is responsible for incorporating all deviations from Contract Drawings into red-line drawings. The deviations to be recorded shall include change orders, field modifications, differing site conditions, etc. At the end of the project, red-lines will be incorporated into the CAD files, in accordance with City requirements.

Items Excluded from Scope of Work

The following items are not included in MM's proposed Scope of Work:

- Inspection services
- Meeting attendance (other than those identified above)
- Review of progress payments
- Materials testing
- Assessment of environmental characteristics at the project sites, particularly those involving hazardous substances

- Review of certified payroll (performed by the City)
- Supervision of Contractor's health and safety procedures
- Review of Shop Drawing Submittals, RFIs, and Change Order Requests beyond the number assumed in the attached Fee Proposal

Fees for Proposed Services

The foregoing proposed scope of services will be performed on a time and materials, reimbursable, Not-to-Exceed fee basis per the attached Hourly Rate Schedule. Expenses will be invoiced at costs plus a 5% handling fee. The fees proposed to perform the services described above amount to \$125,384.

The City will be invoiced monthly based on actual hours and costs completed during each billing cycle. Invoices are due and payable within 30 days of presentation.

Proposed Schedule

The foregoing proposed scope of services will be completed within 18 months of the Contractor's date of authorization of Notice to Proceed.



Schedule of Charges

Mott MacDonald Project Specific Hourly Rates

Job Position	Hourly Rate
Principal-in-Charge	\$ 310.00
Principal Project Manager (Grade G)	\$ 280.00
QA/QC (Grades F & G)	\$ 275.00
Senior Project Engineer / Technical Expert	\$ 210.00
Senior Engineer	\$ 200.00
Project Engineer	\$ 180.00
Engineer IV (Grade D)	\$ 150.00
Engineer II (Grade C)	\$130.00
Engineer I / CAD Technician (Grade B)	\$ 125.00
Administrative Staff	\$ 95.00

Cannon Corporation Project Specific Hourly Rates

Job Position	Hourly Rate
Sr. Electrical Engineer	\$ 198.00
Electrical Engineer	\$ 169.00
Electrical Designer	\$ 130.00
Sr. Structural Engineer	\$ 190.00
Structural Engineer	\$ 135.00