

**DRAFT CONSULTANT SERVICES AGREEMENT BETWEEN
CITY OF SUNNYVALE AND HDR ENGINEERING, INC. FOR
CONSULTING ENGINEERING SMaRT STATION UPDATE**

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and HDR Engineering, Inc. ("CONSULTANT").

WHEREAS, on Tuesday, May 9, 2017 the CITY issued Request for Proposals No. F17-141 for Consulting Engineering for SMaRT Station; and

WHEREAS, CONSULTANT has submitted a proposal in response to the Request for Proposals; and

WHEREAS, CITY is in need of professional services for the development and implementation of strategic institutional and infrastructure updates for the Sunnyvale Materials Recovery and Transfer Station (SMaRT Station®).

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. CONSULTANT shall perform the services and duties in conformance to and consistent with the standards generally recognized as being employed by professional in the same discipline in the State of California.

2. Time for Performance

The term of this Agreement shall be one (1) year from the execution date, 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

Total compensation shall not exceed Two Hundred Sixty-Six Thousand Eight Hundred Fifteen and No/100 Dollars (\$266,815.00) for the duration of the contract. CONSULTANT shall submit invoices to CITY to be paid in accord with the procedures set forth in Exhibit "B" attached and incorporated by reference.

CONSULTANT shall submit invoices to CITY no more frequently than monthly for services provided to date. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707. 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. Any modification or reuse of such documents for purposes other than those intended by this Agreement shall be at CITY's sole risk and without liability to CONSULTANT. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

CONSULTANT shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONSULTANT is aware of the prohibition that no officer 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 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 against any and all suits, claims, damages, liabilities, costs and expenses, including attorney fees, arising out of the performance of the work described herein, to the extent caused by or related to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, subcontractors, or agents in the performance (or non-performance) of services under this Agreement.

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 Bowers, Solid Waste Programs Division Manager 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

Tim Raibley, Principal Engineer 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 sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

To CITY: Mark Bowers, Solid Waste Programs Division Manager
Environmental Services Department
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: Tim Raibley, Principal Engineer
HDR Engineering, Inc.
2365 Iron Point Road, Ste. 300
Berkeley, CA 94704

15. Assignment

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

16. Termination

- A. If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, and fails to cure such default or breach within a reasonable period of time following written notice there, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of satisfactory 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.
- B. 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.

C. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

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 in writing signed by all parties.

18. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

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. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and Consultant and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or Consultant.

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

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

HDR ENGINEERING, INC.
("CONSULTANT")

By _____
City Attorney

By _____

Name and Title

Name and Title

Exhibit A

Detailed Scope of Work

Task I. Workplan

The consultant will prepare for City approval a work plan that illustrates its proposed process, key decision points and milestones for completing this scope of work. The work plan should address proposed process steps and approximate timelines for the Participating Agencies to develop and agree on a long-term MOU extension for operation of the SMaRT Station.

Task II. Review Current Physical and Permitted Capacity of SMaRT Station

The consultant will:

- Research and compile updated records of current and projected amounts, types, and qualities of discarded materials to be delivered by each existing and interested jurisdiction post-2021
- Compare that information to the current physical capacity and permitted capacity of the SMaRT Station
- Prepare a technical memorandum outlining regulatory permitting issues that would need to be addressed prior to operating an improved SMaRT Station
- Include approximate timeframes to complete the permitting processes.

Task III. Multi-jurisdictional Strategic Planning

The consultant will engage with staff of the current Participating Agencies and potential new agencies to determine which agencies want to participate in the SMaRT Station partnership in future years. The consultant will use information of the current and projected amounts, types, and qualities of discarded materials to be delivered by each jurisdiction to project overall materials amounts, costs and revenues under reasonably assumed groupings of participants. The consultant will convene meetings among all or some of the current and potential participating agencies and conduct one-on-one meetings with individual agencies as appropriate.

Subtask 1 - Retention of Current Participating Agencies

The consultant will work with representatives of current Participating Agencies to understand their interest in remaining in the SMaRT Station partnership, including which materials they want processed at SMaRT.

Subtask 2 - Recruitment of New Participating Agencies

The consultant will prepare a list of public agencies (and private companies) that might be interested in becoming SMaRT Station participants. The consultant will prioritize the list, taking into account issues such as each potential participant's:

- Stated level of interest in increased solid waste diversion
- Challenges related to compliance with waste diversion mandates
- Existing and future contractual arrangements that might make it easier or more difficult for the agency to participate
- Adopted policies (e.g. Source Reduction and Recycling Element, Zero Waste Policy, Climate Action Plan) that support use of existing or potential SMaRT Station capabilities.
- Distance and travel time from agency to SMaRT Station, compared to other processing and disposal options.

After discussion with City staff, consultant will make recommendations on the best strategy(ies) to meet the goals of anticipated participants and proceed to implement the approved strategy(ies).

Task IV. Needs Assessment

The consultant will review each current and prospective Participating Agency's Zero Waste Strategic Plan, solid waste-related portions of its Climate Action Plan and other policy documents related to solid waste and recycling, then evaluate the potential for existing or potential SMaRT Station actions or services to support such plans and policies.

Task V. Facility Inspection and Assessment

Subtask 1 - Facility Assessment

The consultant will assess the SMaRT Station's capabilities and its ability to meet the expressed programmatic needs of the future Participating Agencies.

Subtask 2 - Facility Inspection

The consultant will inspect the condition of the existing buildings and other structures, City-provided equipment and related infrastructure, assess their suitability to meet the needs articulated in the needs assessment, identify shortcomings, and recommend needed repairs, replacements and other actions.

This includes preparing and carrying out a plan to inspect and assess the physical condition and utility of various components of the SMaRT Station facility. The assessment is to address components such as:

Condition of the Varco Pruden-supplied metal building, its roof, electrical systems and ability to be adapted to house new waste processing lines

Condition of the office building including its mechanical, electrical and plumbing systems and its roof

Site utilities, roadways and landscaping

Condition and effectiveness of key process lines and equipment, including

Materials recovery facility equipment, including:

- Curbside recyclables processing systems and equipment, including those used to handle used motor oil and oil filters
- Wood/yard trimmings grinding and loadout equipment
- Public recycling/Universal Waste drop-off area
- Hazardous waste storage
- Emergency generators

Systems and facilities, including:

- Water, gas, and electric utility supply infrastructure
- Lighting (interior and exterior)
- Sanitary Sewer
- Stormwater drainage and control systems (industrial and on-industrial flows)
- Employee and visitor parking
- Scale house

Restroom/locker room and break room facilities.

Document findings from the facility inspection in a technical memo that will help inform recommendations contained in the final report.

Task VI. Conceptual Facility Plans

The consultant will prepare conceptual drawings and descriptions of work recommended following the needs and facility assessments. Three conceptual facility plans will be developed for the following scenarios to show how facility needs would change with changes in the types and volumes of materials being processed:

Option 1 – Identify facility needs assuming the current Participating Agencies stay the same and continue to process the same waste streams currently being delivered to the SMaRT Station.

Option 2 – Identify facility needs assuming the same waste stream used for Option 1 plus added processing of green waste, residential and commercial recycling, and construction and demolition waste from the City of Palo Alto.

Option 3a – Identify facility needs assuming the same waste stream used for Option 2 plus additional waste streams from potential new participating agencies identified in Task II above.

OR, instead of 3a

Option 3b - If so directed by the City, identify facility needs for a currently unanticipated grouping of participating agencies that varies from Option 3a.

Conceptual Facilities Plans will include at a minimum a site plan showing the size and location of facilities that are recommended to be modified or replaced including circulation and parking, a preliminary equipment layout for the SMaRT Station waste processing building, and floor plans for any recommended changes to staff offices, meeting rooms and locker rooms.

Initial concepts for the various options will be developed in draft and presented to Participating Agencies for review and comment, then be refined before being incorporated into a final report.

Task VII. Conceptual Cost Estimates

Consultant will prepare cost estimates for each of the three Conceptual Facility Plans outlined above. Costs should be full project implementation costs including: design, permitting, environmental compliance, construction, utility connection fees, and construction management costs.

Task VIII. Additional Analytical Tasks

Subtask 1 - Administrative and Budget Assistance – The consultant will assist and advise City staff with responses to inquiries from representatives of the Participating Agencies and preparation of budget documents, including cost and revenue projections, project descriptions, and status updates.

Subtask 2 - Host Fee - Part of the project involves updating the 1992 MOU. The MOU provides for each Participating Agency to pay the City of Sunnyvale General Fund a Host Fee. The MOU set the initial (1992) Host Fee amount at \$2.28 per ton of MSW. With annual CPI adjustments that started in July 1992, the Host Fee is \$4.43 per ton in FY 2016/17.

The 1992 MOU did not describe the purpose of the Host Fee, but it can be viewed, in part, as a way of reimbursing Sunnyvale for its General Fund costs of

hosting the facility. Examples of these indirect expenses are wear and tear on City streets, costs arising from Department of Public Safety responses to various types of events at the facility, oversight/assistance provided by City departments that help with administration and use of the SMaRT Station, the opportunity cost for the 9.5 acres of land occupied by the SMaRT Station, etc.

Under this task, the Consultant would:

Survey other California jurisdictions to determine the current host fee for similar multijurisdictional solid waste material recovery facilities (5 minimum).

Estimate the amount of General Fund overhead cost related to the SMaRT Station

Recommend a financial mechanism (or mechanisms) and dollar amounts that would equitably reimburse Sunnyvale for hosting the SMaRT Station.

Subtask 3 - SMaRT Station Land Rent – After the three cities entered into the MOU, the Sunnyvale General Fund began charging the Solid Waste Fund annual rent for the property occupied by the SMaRT Station. In FY 2004/05 the rent amount was set at \$352,388 based on an analysis of real estate sales data conducted by the City's Property Manager. With CPI adjustments, the amount of the rent had increased to \$422,842 in FY 2016/17. A similar analysis of real estate sales data conducted in December 2016 by Ryan Sandoval, City Property Administrator, estimated an updated rental amount of \$790,665.

Under this task, the Consultant would:

Review and confirm, or update, the rental amounts previously calculated.

Recommend a financial mechanism (or mechanisms), dollar amounts and periodic adjustments that would reimburse the Sunnyvale General Fund for the fair market value of the real estate occupied by the SMaRT Station.

Task IX. Final Report

A final report will be prepared to document the consultants finding and recommendations from the study once all other tasks have been completed. A draft final report will be provided to the City for review and comment.

- **Public Presentations**

As an optional task the consultant will develop presentation materials outlining findings and recommendations included in the final report. Attend and present at up to four public meetings of elected officials or advisory bodies.

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 or equivalent is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.
4. **Errors and Omissions** Liability Insurance appropriate to the Consultant's Profession: \$2,000,000 per claim.

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** policy shall 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. Contractor shall provide a thirty (30) day written notice of change in coverage protection, or reduction in coverage limits.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not 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.