

**AGREEMENT WITH SCHAAF & WHEELER CONSULTING CIVIL ENGINEERS
FOR DESIGN PROFESSIONAL SERVICES
FOR
CITYWIDE SMALL TRASH CAPTURE PROJECT**

This Agreement, made and entered into this day of _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and Schaaf & Wheeler Consulting Civil Engineers, a corporation, ("CONSULTANT"), whose address is 1171 Homestead Rd., Suite 255, Santa Clara, CA 95050:

RECITALS:

A. CITY desires certain professional design services hereinafter described.

B. CITY desires to engage CONSULTANT to provide these professional design services by reason of its qualifications and experience for performing such services and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

The scope of services to be performed by CONSULTANT under this Agreement is as described in Exhibit A to this Agreement, attached and incorporated by reference.

SECTION 2 - DUTIES OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONSULTANT represents that it is qualified to furnish the services described under this Agreement.

CONSULTANT shall be responsible for employing or engaging all persons necessary to perform the services of CONSULTANT.

CONSULTANT agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

SECTION 3 - DUTIES OF CITY

CITY shall provide pertinent information regarding its requirements for the project.

CITY shall examine documents submitted by CONSULTANT and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONSULTANT's work.

SECTION 4 - TERM

The services to be performed under this Agreement shall commence upon execution of this Agreement and be completed within six (6) months.

SECTION 5 - PAYMENT

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONSULTANT a fee in an amount of \$112,300, pursuant to rates stated in Exhibit B to this Agreement, attached and incorporated by reference.

SECTION 6 - TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ten (10) days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement upon receipt of said written notice.

Upon termination and upon CITY's payment of the amount required to be paid, documents become the property of CITY, and CONSULTANT shall transfer them to CITY upon request without additional compensation.

SECTION 7 - OWNERSHIP OF DOCUMENTS

All documents prepared by CONSULTANT in the performance of this Agreement, although instruments of professional service, are and shall be the property of CITY, whether the project for which they are made is executed or not.

SECTION 8 - CONFIDENTIALITY

All reports and documents prepared by CONSULTANT in connection with the performance of this Agreement are confidential until released by CITY to the public. CONSULTANT shall not make any such documents or information available to any individual or organization not employed by CONSULTANT or CITY without the written consent of CITY before any such release.

SECTION 9 - INTEREST OF CONSULTANT

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 - CONSULTANT'S STATUS

It is expressly agreed that in the performance of the professional services required under this Agreement, CONSULTANT shall at all times be considered an independent CONSULTANT as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONSULTANT an agent or employee of CITY while providing services under this Agreement.

SECTION 11 - INDEMNITY

CONSULTANT agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONSULTANT's negligence, recklessness or willful misconduct to the maximum extent permitted by state law. To the extent permitted by Civil Code section 2782.8, CONSULTANT agrees to defend City, its elected and appointed officials, employees, and agents against any such claims.

SECTION 12 - INSURANCE

CONSULTANT shall procure and maintain for the duration of the contract and three years thereafter (five years for building or major improvements) the insurance specified in Exhibit C to this Agreement.

SECTION 13 - NONASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONSULTANT and cannot be transferred, assigned, or subcontracted by CONSULTANT without the prior written consent of CITY.

SECTION 14 - RELIANCE UPON PROFESSIONAL SKILL OF CONSULTANT

It is mutually understood and agreed by and between the parties hereto that CONSULTANT is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement and that CITY relies upon the skill of CONSULTANT to do and perform the work in the most skillful manner, and CONSULTANT agrees to thus perform the work. The acceptance of CONSULTANT's work by CITY does not operate as a release of CONSULTANT from said obligation.

SECTION 15 - WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 16 – SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

SECTION 17 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 18 - NON-DISCRIMINATION

CONSULTANT warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONSULTANT nor any of its sub-consultants shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 19 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 20 - LITIGATION

CONSULTANT shall testify at CITY's request if litigation is brought against CITY in connection with CONSULTANT's services under this Agreement. Unless the action is brought by CONSULTANT, or is based upon CONSULTANT's wrongdoing, CITY shall compensate CONSULTANT for preparation for testimony, testimony, and travel at CONSULTANT's standard hourly rates at the time of actual testimony.

SECTION 21 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY: Elton Yee
City of San Mateo
330 W. 20th Ave
San Mateo, CA 94403

To CONSULTANT: Schaaf & Wheeler Consulting Civil Engineers
Attn: Charles Anderson
1171 Homestead Rd., Suite 255
Santa Clara, CA 95050

SECTION 22 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONSULTANT.

SECTION 23 - AUTHORITY TO ENTER INTO AGREEMENT

CONSULTANT has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

SECTION 24 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

CONSULTANT

Azalea Mitch
Public Works Director

Date

Charles Anderson Its Authorized Agent President	Date
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If a Corporation, can be either 1) President or 2) Vice President plus an additional corporate officer (i.e., Secretary, Treasurer) who shall sign below.

APPROVED AS TO FORM

ADDITIONAL CORPORATE
OFFICER
(if necessary per the above)

Linh Nguyen
Assistant City Attorney

Date _____

Attachments:

Exhibit A: Scope of Services
Exhibit B: Payment Rates
Exhibit C: Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

1. Project Management and Coordination

Schaaf & Wheeler will be made available to the city throughout this project via email and telephone. This scope assumes 2 virtual meetings and 2 in-person meetings. Meeting agenda and minutes will be prepared. Milestone meetings are included within the individual tasks for detailed review of PS&E. Drawings will go through internal QA/QC process prior to submittal to the City for review. A principal who has not worked on the drawings will be identified to provide independent QA/QC to ensure the City receives drawings.

Schaaf & Wheeler will also coordinate with vendors to ensure that adequate information is on the plan set, coordinate specifications, and make bid aware so multiple vendors can provide competitive bids. Based on past experience, Schaaf & Wheeler does not anticipate any permits or agency approvals because the construction will be in existing stormwater infrastructure, not requiring any permits.

Monthly progress reports will be submitted with invoices to keep the City up to date on the progress of the project and schedule.

Deliverables:

- Baseline schedule
- Monthly project progress report and schedule submitted with invoice
- Meeting agendas and minute

2. Site Investigation

Schaaf & Wheeler will visit each catch basin to receive a device to determine constructability and collect measurements. Catch basins that are “daisy chained” will be identified and removal of device locations that can be treated downstream. Maps created as part of Task 2 will be field verified. Typical figures of catch basins with measured dimensions will be developed. This scope assumes 15 days of field work.

Deliverables:

- Field inspection forms
- Spreadsheet of collected data
- Figure of catch basins to have trash capture installed and those that do not require it
- Updated drainage areas to each device location

3. Plans, Specifications, and Estimates

Drawings will be prepared in ArcMap and based on GIS locations of catch basins. Sheets will include an overview and tiles, and then zoomed in sheets for locations with addresses and details on dimensions for each location.

Schaaf & Wheeler will prepare technical specification section that at least two vendors can bid on inlet trash treatment device(s). Scope excludes preparing front end specifications, which are assumed to be completed by the city. Includes preparing an engineer’s cost estimate. Scope excludes completing

hydraulic calculations, specification section will include requirements for device hydraulic performance.

Schaaf & Wheeler will package the maps, technical specification and estimate for City review. This assumes City responds to the 30% and 90% sets with one set of compiled comments. This scope also assumes that no utility coordination will be required as construction will be within existing infrastructure and no excavation will be required.

Deliverables:

- 30% PS&E submittals in both paper and electronic format (MS Word, Excel, and pdf)
- 90% PS&E submittals in both paper and electronic format (MS Word, Excel, and pdf)
- Final bid documents: submit original stamped drawings and complete contract book including bid documents, general conditions and special provisions in both paper and electronic format (MS Word and pdf, plans in AutoCAD and pdf)
- Final quantity estimates, quantity calculation sheets, final construction cost estimate submitted in the format of the schedule of bid items in both paper and electronic format (MS Word and pdf), including detailed construction cost estimate documentation.
- Spreadsheet summarizing all locations with addresses, dimensions, depths, etc.
- GIS shapefiles of locations and drainage areas

4. Bid Support

Schaaf & Wheeler will attend a pre-bid meeting and respond to questions concerning the plans, specification and other bid documents. Schaaf & Wheeler will prepare contract addenda, if needed.

Deliverables:

- Contract addenda, if needed, for distribution by City.
- Written responses to bidder's questions for distribution by City during bid phase

5. Engineering Services During Construction

Schaaf & Wheeler will be available to review submittals and respond to RFIs. This scope includes the reviews of up to 4 submittals and responding to 4 RFIs. In addition, Schaaf & Wheeler will provide final inspection to ensure devices are installed according to specifications. This scope includes 4 days of field inspections.

Proposed Budget and Fee Schedule

Schaaf & Wheeler's standard hourly rate schedule is listed below with a breakdown of our maximum "not to exceed" fee included on the following page.

Hourly Charge Rate Schedule

Personnel Charges

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

Current rates by classification are listed below:

<u>Classification</u>	<u>Rate/Hr</u>	<u>Classification</u>	<u>Rate/Hr</u>
Principal Project Manager	\$250	Construction Manager	\$235
Senior Project Manager	\$235	Senior Resident Engineer	\$210
Senior Engineer	\$220	Resident Engineer	\$190
Associate Engineer	\$200	Assistant Resident Engineer	\$175
Assistant Engineer	\$185		
Junior Engineer	\$175		
Designer	\$160		
GIS Analyst	\$160		
Technician	\$155		
Engineering Trainee	\$125		

Litigation Charges

Work done in preparation for litigation and other very high level-of-expertise assignments is charged at \$350 per hour. Court or deposition time as an expert witness is charged at \$450 per hour.

Materials and Services

Subcontractors, special equipment, outside reproduction, data processing, computer services, etc., will be charged at 1.10 times cost.

Effective 1/1/22

EXHIBIT C

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the CONSULTANT’s profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate

If the CONSULTANT maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT’s insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **CONSULTANT’s insurance coverage shall be primary** insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the CONSULTANT’s insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days’ prior written notice** (10 days for non-payment) has been given to the City.

Waiver of Subrogation

CONSULTANT hereby grants to City a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the City by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the CONSULTANT to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

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

Verification of Coverage

CONSULTANT shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.