



# STAFF REPORT

CITY COUNCIL OF THE CITY OF SAUSALITO

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## AGENDA TITLE

Approve a Professional Services Agreement with Swinerton Management & Consulting for Pre-Program / Pre-Construction Management Services for Priority Sewer Projects

## RECOMMENDED MOTION

Adopt a Resolution of the City Council of the City of Sausalito Approving and Authorizing the City Manager to Execute a Professional Services Agreement with Swinerton Management & Consulting, Inc. for Pre-Program / Pre-Construction Management Services for Priority Sewer Projects

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## SUMMARY:

To ensure continued compliance with the EPA Order while framing a fiscally-responsible program for addressing urgent environmental and public health issues, a hierarchy of sewer rehabilitation projects has been identified by Staff and consultants. The product of this analysis was presented to Council by West Yost at the regular Council meeting of January 27, 2009. Because of the multi-year nature of the delivery of that hierarchy, Staff has requested assistance from Swinerton Management & Consulting (SMC) to join a team including designers (currently West Yost), environmental compliance specialists (Prunuske Chatham, Inc. is a separate contract on tonight's agenda) and Staff to evaluate and recommend approaches and phasing for the high-priority sewer pipeline replacement projects over the next few years. Given the uncertain revenue stream for delivery of these projects at this point in time, the scope of services requested is limited, but once the funding becomes more certain, the up-front coordination will be expected to result in much more efficient delivery than could otherwise be achieved.

As Council is aware, SMC is providing construction management services to the City during delivery of the Public Safety Facilities Project funded by Measure "S" Bond proceeds. SMC's good service to the City during the course of its involvement on that project has added significant value when compared to what Staff could have provided.

The budget proposed is \$6,470 including reimbursable expenses, for which adequate funding is available in the approved budget as summarized on the following page:

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Item: 434  
Meeting Date: 5/5/2009  
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Account	Department	Amt Requested	Amt Unencumbered as of April 29, 2009 <sup>1</sup>
110-550-3000-320	Sewer Fund Professional Services	\$6,470	\$29,511

## BACKGROUND

On the basis of its proposal, and its good service to the City on the PSF Project, SMC has demonstrated a level of experience, competence, staffing and other professional qualifications appropriate for the necessary services. Further, SMC has agreed to and accepted the terms and conditions of the City's standard professional services agreement which was prepared and approved as to form by the City Attorney.

Because the proposed services fall within the definition of "Professional Services" set forth in section 3.30.020 of the Sausalito Municipal Code (SMC) – which specifically includes construction management services<sup>2</sup> – it is not necessary to comply with either formal or informal bidding procedures with respect to award of the contract. The requirements of SMC Article 4, sections 3.30.500 *et seq.* have been met.

## ISSUES

None identified. The proposed professional services will not have an adverse effect on the environment and are being performed to comply with EPA and other legal requirements. Were the sewer rate increase process to delay the availability of construction funds, the subject consulting services recommended would be required anyway.

## FISCAL IMPACT

The funding requested is \$6,470. Said funding is available in the adopted Sewer Fund budget, account number 110-550-3000-320, Professional Services. As of April 29, 2009, \$29,511 was available and unencumbered in that account. Council approval is not required under SMC section 3.30.520 but is being sought anyway.

## STAFF RECOMMENDATION

Adopt Resolution Approving and Authorizing the City Manager to Execute a Professional Services Agreement with Swinerton Management & Consulting, Inc. for Pre-Program / Pre-Construction Management Services for Priority Sewer Projects

<sup>1</sup> Reflects \$62,899 minus \$33,388 in budget for PCI under separate agenda item.

<sup>2</sup> "Professional or special services" means any work performed by an attorney, doctor, architect, engineer, land surveyor, construction manager, appraiser, expert, accounting firm, planner, consultant or those services such as computer services and other services which require special performance criteria, specific experience, training, personal judgment, quality of work or factors other than simply obtaining the service at the lowest cost to the City.

**ATTACHMENTS**

1. Resolution of the City Council of the City of Sausalito Approving and Authorizing the City Manager to Execute a Professional Services Agreement with Swinerton Management & Consulting, Inc. for Pre-Program / Pre-Construction Management Services for Priority Sewer Projects

PREPARED BY:



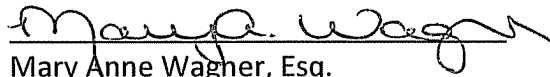
Jonathon Goldman  
Director of Public Works

REVIEWED BY:



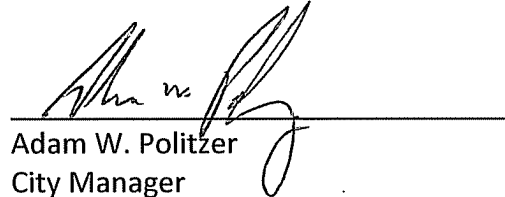
Charles Francis  
Finance Director

REVIEWED BY:



Mary Anne Wagner, Esq.  
City Attorney

SUBMITTED BY:



Adam W. Politzer  
City Manager

[PSA SMC Sewer]

ATTACHMENTS 1

RESOLUTION No. \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAUSALITO APPROVING  
AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL  
SERVICES AGREEMENT WITH SWINERTON MANAGEMENT & CONSULTING  
FOR PRE-PROGRAM / PRE-CONSTRUCTION MANAGEMENT SERVICES FOR  
PRIORITY SEWER PROJECTS**

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**WHEREAS**, with Resolution \_\_\_ of March 10, 2009 the City Council approved mid-year budget modifications to the 2008-2009 Annual Budget which includes funding for EPA Order Compliance (Fund 110-550-3000-320) and General Sanitary Sewer Rehab Project 04 (Fund 110-550-4067-450) an unencumbered balance of \$167,876 in those funds remains as of April 29, 2009; and

**WHEREAS**, the Director of Public Works has evaluated alternatives and contacted Swinerton Management & Consulting (SMC) regarding the City's need for pre-program and pre-construction assistance with the Priority Sewer Projects; and

**WHEREAS**, the Director of Public Works requested and SMC submitted a proposal to perform the necessary services; and

**WHEREAS**, in conformance with Article 4, Section 3.30.500 *et seq.* of the Sausalito Municipal Code after evaluating SMC's proposal the Director of Public Works has concluded that SMC has the level of experience, competence, staffing and other professional qualifications necessary for more than a satisfactory performance of the services required and that award of the work to SMC will provide the best value to the City when compared with the alternatives identified (self-performance, and development of a detailed request for proposals to multiple candidates); and

**WHEREAS**, the proposed professional services will not have any adverse environmental impact; and

**WHEREAS**, the proposal received includes a detailed scope of services, schedule and budget, as well as acceptable terms and conditions for performance of said services.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Sausalito:

1. Approves a Professional Services Agreement with Swinerton Management & Consulting for the services described in the attached Agreement on a time and materials reimbursable basis against a budget of \$6,470 which shall not be exceeded without express approval.
2. Authorizes the City Manager to execute the attached Professional Services Agreement on behalf of the City.

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Sausalito on the 5th day of May, 2009 by the following vote:

**AYES:** Councilmembers:  
**NOES:** Councilmembers:  
**ABSTAIN:** Councilmembers:  
**ABSENT:** Councilmembers:

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MAYOR OF THE CITY OF SAUSALITO

ATTEST:

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DEPUTY CITY CLERK

**CITY OF SAUSALITO  
PROFESSIONAL/CONSULTING SERVICES AGREEMENT**

This **PROFESSIONAL/CONSULTING SERVICES AGREEMENT**, (this "Agreement") is made and entered into this \_\_\_\_ day of May, 2009, by and between the **CITY OF SAUSALITO**, a municipal corporation (hereinafter "City") and **Swinerton Management & Consulting, Inc.** (hereinafter "Consultant").

In consideration of the mutual promises contained herein, the parties hereto agree as follows:

**Section 1. Scope of Work.**

Consultant shall provide City with the services described in Exhibit A which is attached hereto and incorporated herein by this reference as though set forth in full.

The duties and services required of Consultant under this Agreement and pursuant to this Section 1 are referred to throughout the remainder of this Agreement as "the Work."

**Section 2. Responsible Individual.**

The individual directly responsible for the performance of the duties of Consultant is **Dennis Wong, Project Executive**. Consultant represents and warrants that the execution of this Agreement has been approved by Consultant and that person executing this Agreement on behalf of Consultant has the full authority to do so.

**Section 3. Work Schedule.**

Consultant shall be available to work as many hours as required to complete the Work immediately upon receipt of the signed Agreement from the City and shall complete each task in a timely manner as specified. Consultant shall not be held responsible for delays caused beyond its reasonable control.

**Section 4. Compensation.**

In consideration of the performance of the Work described in Section 1 pursuant to the schedule set forth in Section 3, Consultant shall be compensated on a time and materials reimbursable basis in an amount not to exceed **SIX-THOUSAND FOUR-HUNDRED SEVENTY DOLLARS (\$6,470)** inclusive of reimbursable expenses as provided for in Consultants Fee Schedule included in Exhibit A. Consultant acknowledges and agrees that the compensation to be paid to Consultant under this Section 4 represents the full budget authorized to Consultant in connection with performance of the Work.

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**Section 5. Amendments.**

In the event City desires to retain Consultant for the performance of additional services, or wishes to delete any services in connection with this Agreement, specifications of such changes and adjustments to compensation due Consultant therefore shall be made only by written and signed amendment to this Agreement.

**Section 6. Independent Contractor - Subcontractors.**

It is specifically understood and agreed that in the making and performance of this Agreement, Consultant is an independent contractor and is not and shall not be construed to be an employee, common law employee, agent or servant of City. The consultant shall be solely liable and responsible to pay all required taxes and other obligations, including, but not limited to, withholding and Social Security. Consultant acknowledges and agrees that he/she is not entitled to the benefits of civil service status and/or the rights and privileges enjoyed by civil service employees and Consultant hereby waives any and all claims to such rights and/or privileges.

**Section 7. Consultant's Responsibility.**

It is understood and agreed that Consultant has the professional skills necessary to perform the Work, and that City relies upon the professional skills of the Consultant to do and perform the Work in a skillful and professional manner in accordance with the standards of the profession. Consultant thus agrees to so perform the Work.

Acceptance by City of the Work, or any of it, does not operate as a release of the Consultant from such professional responsibility. It is further understood and agreed that Consultant has reviewed in detail the scope of the work to be performed under this Agreement and agrees that in his professional judgment, the Work can and shall be completed for a fee within the amounts set forth in Section 3 of this Agreement.

**Section 8. Hold Harmless and Indemnification.**

Consultant shall indemnify, defend and save City, its officers, elected and appointed officials, employees, contractors and agents harmless from and against any and all liability, claims, suits, actions, damages and/or causes of action of any kind arising out of any bodily injury, personal injury, property damage or in violation of any federal, state or municipal law or ordinance or other cause in connection with the activities of Consultant, or on account of the performance or character of the Work or otherwise related to its performance of this Agreement to the extent that any such liability, claims, suits, actions, damages and/or causes of action arises out of the intentional, negligent or willful misconduct of the Consultant.

**Section 9. Insurance.**

Consultant shall take out and maintain during the life of the Contract: (a) Comprehensive General Liability and Automobile Liability insurance in an amount not less than \$1,000,000 combined single limit applying to bodily injury, personal injury and property damage; (b) professional liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.

The liability policy(ies) are to contain, or be endorsed to contain, the following provisions:

The City, its officers, elected and appointed officials, employees, contractors and agents must be named as a Named Insured under the coverage afforded with respect to the work being performed under the Agreement.

**Section 10. Nondiscrimination.**

There shall be no discrimination against any employee who is employed in the Work, or against any applicant for such employment because of race, religion, color, sex or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**Section 11. City Personnel Conflict of Interest.**

No officers, member, or employee of City and no member of the governing body of City who exercises any functions or responsibilities in the review, approval of the undertaking or carrying out of the project, shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which she is, directly or indirectly interested; nor shall any such officer, member or employee of City have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**Section 12. Consultant Conflict of Interest.**

Consultant covenants that she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. Consultant further covenants that in the performance of this Agreement, no persons having any such interest shall be employed.



**Section 13. Assignment.**

Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of City.

**Section 14. Ownership of Documents.**

Consultant agrees that all documents produced in the performance of this Agreement shall be the sole property of the City including all rights therein of whatever kind and whether arising from common or civil law or equity. The Work shall be used solely for the project for which it was originally intended.

**Section 15. Termination.**

City may terminate this Agreement at any time without reason stated or required by giving written notice of the same and specifying the effective date thereof, at least seven calendar days before the effective date of such termination. If the Agreement is terminated by City as provided herein, Consultant shall be paid for all effort and material expended on behalf of the Work under the terms of this Agreement, less any charges against Consultant as otherwise provided herein, up to the effective date of termination, except that upon notification of such termination, Consultant shall immediately cease to undertake any duties under the Agreement not yet underway, and shall limit its further activities up to the effective date of termination to those duties necessary to wind up work then underway.

**In Witness Whereof**, City and Consultant have executed this Agreement as of the date first written above.

City of Sausalito

Consultant

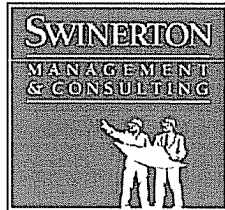
\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

approved as to form:

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**EXHIBIT A**  
**SCOPE OF WORK**



*Innovative  
Construction  
Since 1888*

April 24, 2009

Mr. Jonathon Goldman  
Director of Public Works  
City of Sausalito  
420 Litho Street  
Sausalito, CA 94965

**Re: Pre-Program Services for Sanitary Sewer Line Replacement CIP Priority Projects**

Dear Jonathon:

**Swinerton Management & Consulting** is pleased to submit our Proposal for Pre-Program / Pre-Construction Management Services for the proposed high priority Sanitary Sewer Line Replacement CIP. We look forward to the opportunity to continue to assist the City in planning solutions for the myriad of complex issues associated with this project.

We propose to work with the City of Sausalito in partnership with the design consultant West Yost Engineering, and environmental consultant Prunuske-Chatham, to determine the best approaches and phasing for the high-priority sewer pipeline replacement projects that would be undertaken over multiple years. The staging of this work would be undertaken in very narrow street right-of-ways and the method of replacement of existing damaged sewer lines will be disruptive to the neighborhood. Extreme care must be exercised to ensure that this work is carried out with the utmost care for public safety but equally important is that the work must comply with all the stringent environmental regulations.

Our fee proposal includes providing an experienced manager on an as-needed basis phase. For purposes of this proposal, we have assumed the following schedule which will support the City's process to assemble and compile the financing, design and environmental supporting documents that will then permit the City Council to review, determine and approve the best approach: 2-month Pre-program phase (to the end of June 2009)

Pre-program management services would be available to the City on an as-needed basis to assist the team, and could (but not necessarily) include the following:

- Constructability Review and Staging of Work
- Project Budgeting assistance to designer
- Project Scheduling / Phasing and review
- Permit / Approvals Process
- Project team coordination meetings and minutes:
- Contractor Outreach / Pre-qualification (if deemed desirable)

Swinerton Management & Consulting, Inc.  
260 Townsend Street  
San Francisco, California 94107  
www.swinerton.com

Telephone  
415 984-1261

Facsimile  
415 984-1292

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**FEE BUDGET BREAK-OUT**

The fee budget is broken down by task as follows. We propose invoicing on a monthly basis.

<b>Pre-Program / Pre-Construction Phase</b>		<b>2 Months</b>			
Task: (As-needed basis)		PX Hrs:	PM	EST	Budget Hrs: Fee
Constructability Review	Support designer; review	4	4		8 1,340
Budgeting Assistance	Validate unit pricing; review	4		4	8 1,320
Project Scheduling/Phasing	Review; assess durations	4	4		8 1,340
Meetings, team coordination	Meeting attendance, minutes, etc.	10			10 1,850
<b>Totals</b>		<b>22</b>	<b>8</b>	<b>4</b>	<b>34 5,870</b>

<b>Construction Phase</b>		<b>tbd Months</b>			
Task:		PX Hrs:	PM	Hrs:	Est Hrs: Fee Range:
NIC (to be quoted)					NIC

**KEY:**

**PX: Project Executive**

**PM: Project Manager**

**EST: Estimator / Scheduler**

**The Fee for laobr proposed for the above scope of services is \$5,870. We suggest an additional 10% allowance for reimbursable and direct costs of \$580 for a total Fee Proposal of \$6,470.** Construction phase services would be in addition to this amount if requested by the City. Our standard 2009 hourly rates are as follows:

Standard Hourly Rates:

- Project Executive: \$185 / hour
- Senior Project Manager: \$175 / hour
- Project Manager: \$150 / hour
- Estimator/Scheduler: \$145 / hour
- Project Engineer: \$100 / hour
- Administration: \$75 / hour

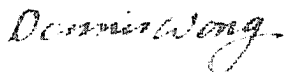
**EXPENSES:**

The following Expenses are in addition to the compensation for Basic Services: travel outside the Bay Area (mileage, parking and tolls), delivery services, and cellular telephone calls.

Swinerton looks forward to working with the City of Sausalito, West Yost and Prunuske-Chatham team on this challenging and important project. Please let me know if you have any questions or need additional information.

Sincerely,

Swinerton Management & Consulting



By: Dennis Wong  
Project Executive

Cc: Cheryl Johnson,

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Charissa Frank

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