



## CITY COUNCIL AGENDA REPORT

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September 15, 2020  
Operations Services

**TITLE: APPROVE AGREEMENT WITH SHAPE INCORPORATED IN THE AMOUNT OF \$130,000 FOR SEWER AND STORM PUMP REPAIR AND REPLACEMENT SERVICES**

### **SUMMARY**

The Utility Division requires specialized as-need pump repair and maintenance services for various City sewer pump stations. The pump stations are equipped with Flygt brand submersible pumps. Shape Incorporated (Shape) is the local representative for Flygt Pumps; and can do the specialized services needed by the Utilities Division. Shape has been providing pump services to the City for over ten years and has consistently given the City excellent service. Therefore, Staff is recommending that the City enter into a two-year as-need maintenance agreement with Shape. Staff is also recommending that Shape be a sole source vendor due their status as the only local Flygt Pump factory representative.

### **RECOMMENDATION**

Approve and authorize the City Manager to execute a two-year maintenance service agreement with Shape for Sewer and Storm Pump Repair and Replacement Services for a total of \$130,000 with a not-to-exceed amount of \$65,000 per fiscal year with the option for two additional one-year extensions.

### **FINANCIAL STATEMENT**

Funding is appropriated in the Sewer maintenance operating budget. The total compensation for the two-year agreement is \$130,000.

**BACKGROUND**

The Utilities Division of the Operations Services Department maintains eleven sewer lift stations of which seven are equipped with Flygt brand submersible pumps. Shape is the local representative for Flygt pumps providing a range of services to pump owners including parts, technical support, repair (both onsite and in shop), and on-site removal and replacement. They also ensure that any repairs or replacement of current pumps meet Flygt’s factory standards and are covered fully under the Flygt warranty. The Utilities Division has been using Shape for over ten years to perform the services noted above. Shape has local presence with an office located in Pleasanton and another in Stockton. The benefits of using Shape include:

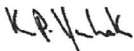
- local source of parts
- on-site troubleshooting and technical support
- minimum pump down time
- rapid response to pump failures
- local office and service team.

**DISCUSSION**

The City uses Flygt pumps because of their proven reliability and durability in sewer wet wells. Sewage contains chemicals, solids, abrasives, rags, and many other items that get put down the drain. Submersible sewer pumps operating in these conditions require frequent inspection, repair, and general maintenance. Staff schedules four to six pumps for inspection and maintenance every year. The inspections usually result in some repair work such as impeller or seal replacements. In some cases, pumps may need to be replaced due to worn parts or major breakage. Staff is anticipating the need to replace one to two pumps per year.

The term for the new agreement with Shape is two years with the option for two additional one-year extensions.

Submitted by:



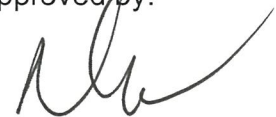
Kathleen Yurchak  
Director of Operations and  
Water Utilities

Fiscal Review:



Tina Olson  
Director of Finance

Approved by:



Nelson Fialho  
City Manager

Attachments:

1. Maintenance Services Agreement

**AS-NEEDED MAINTENANCE AND TRADE SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_ day of September between Shape Incorporated ("Contractor") whose address is 5515-A Johnson Drive, Pleasanton, California 94588 and the **CITY OF PLEASANTON**, a municipal corporation ("City").

**RECITALS**

- A. Contractor is qualified and experienced in providing the work or services of Sewer and Storm pump repair and replacement and as set forth in Exhibit A of this Agreement.
- B. City finds it necessary and advisable to obtain work or services from Contractor on an as-needed basis.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

- 1. **Term**. The term of this Agreement commences on the date written above and will expire two (2) years from that date unless the parties agree to extend the Agreement for an additional two (2) one-year terms, not to exceed four (4) years total for this Agreement.
- 2. **Services to be Performed**. Contractor shall perform, or cause to be performed, the type of work or services described in Exhibit A. This Agreement does not obligate the City to utilize Contractor exclusively for the kind of work or services.

When requested by the City, Contractor will submit a written estimate detailing the cost to perform the requested work or service. No work shall be performed unless approved by the City's designated project manager.

- 3. **Compensation**. Total compensation pursuant to this Agreement shall not exceed \$65,000 per year. Rates shall be as set forth in Exhibit A. For the second or subsequent years of the Agreement, the cost of each one-year term may increase only by the change in the consumer price index for the San Francisco-Oakland-San Jose Metropolitan Area (all items index: all urban consumers) for the twelve-month period ending in April each year as published by the Bureau of Labor Statistics, U.S. Department of Labor.
  - a. Payment shall be made within thirty (30) days of receipt of Contractor's invoice and approval by City.
  - b. If the prevailing wage for crafts or classifications subject to this Agreement change during the term of this Agreement, the City will accept corresponding increases in Contractor's hourly rates when sufficient documentation is received from the Contractor and verified with the Department of Industrial Relations.
- 4. **Indemnification**. Contractor shall hold harmless, defend, and indemnify the City, its officers, agents and employees ("Indemnitees"), against any and all claims, costs, demands, causes of action, suits, losses, expenses, attorney's fees, or liability, arising from or in any manner related

to Contractor's (includes Contractor's employees, agents, or subcontractors) negligent act or omission, whether alleged or actual, regarding the work or services performed or caused to be performed pursuant to this Agreement and any amendments thereto. Contractor shall not, however, be obligated to indemnify Indemnitees from Claims arising from the sole negligence or willful misconduct of Indemnitees. This indemnification includes any claim that the materials or equipment provided under this Agreement, or any tool, article or process used, constitutes an infringement of any patent issued by the United States. This indemnification provision shall survive termination or cancellation of the Agreement.

5. **Insurance.** During the term of this Agreement, Contractor shall maintain in full force and effect, at its own cost and expense, insurance coverages with insurers with an A.M. Best's rating of no less than A:VII.
  - a. **General Liability and Bodily Injury Insurance.** Commercial general liability insurance with limits of at least \$2,000,000 combined limit for bodily injury and property damage that provides that the City, its officers, employees and agents are named additional insureds under the policy as evidenced by an additional insured endorsement satisfactory to the City Attorney. The policy shall further state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary insurance for work performed by Contractor and its subcontractors, and that no other insurance effected by City or other named insured will be called on to cover a loss.
  - b. **Automobile Liability Insurance.** Automobile liability insurance with limits not less than \$2,000,000 per person/per occurrence.
  - c. **Workers' Compensation Insurance.** Workers' Compensation Insurance for all of Contractor's employees shall be in strict compliance with State laws, including a waiver of subrogation and Employer's Liability Insurance with limits of at least \$1,000,000.

For work or services deemed public works, by signing this Agreement, Contractor is certifying, pursuant to Section 1861 of the California Labor Code, that: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

- d. **Certificate of Insurance.** Contractor shall file a certificate of insurance with the City prior to the City's execution of this Agreement, and prior to engaging in any operation or activity set forth in this Agreement. The Certificate of Insurance shall provide in writing that the insurance afforded by this Certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing notice to the City in accordance with California Insurance Code section 677.2 which requires the notice of cancellation to: 1) include the effective date of the cancellation; 2) include the reasons for the cancellation; and 3) be given at least 30 days prior to the effective date of the cancellation, except that in the case of cancellation for nonpayment of premiums or for fraud, the notice shall be given no less than 10 days prior to the effective date of the cancellation. Notice shall be sent by certified mail, return receipt requested. In addition, the insured shall provide thirty (30) days prior written notice to the City of any cancellation, suspension, reduction

of coverage or in limits, or voiding of the insurance coverage required by this agreement. The City reserves the right to require complete certified copies of policies.

- e. **Subcontractors.** Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.
- f. **Waiver of Subrogation.** The insurer agrees to waive all rights of subrogation against the City, its officers, employees and agents.
- g. **Defense Costs.** Coverage shall be provided on a “pay on behalf of” basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusions.
6. **Independent Contractor.** The Contractor is an independent contractor retained by the City. All personnel employed by the Contractor, including subcontractors, and personnel of subcontractors, are not and shall not be employees of the City.
7. **Contractor’s Warranty.** Contractor shall bear the risk of loss or damage to any goods associated with the services until delivered to and accepted by City. Contractor further warrants that all work done, and goods provided under this Agreement shall: a) meet all conditions of the Agreement; b) shall be free from all defects in design, material and workmanship; and 3) shall be fit for the purposes intended. If any defects occur within the 12 months following acceptance, Contractor shall be solely responsible for the correction of those defects.
8. **Labor Code/Prevailing Wages.** The work performed under this Agreement is a “public work” and prevailing wage laws shall apply. No less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work under this Agreement shall be paid to all workers, laborers and mechanics employed in the execution of the work by the Contractor or any subcontractor doing or contracting to do any part of the work. The appropriate determination of the Director of the California Department of Industrial Relations shall be available for inspection. Contractor shall post, at each job site, a copy of the prevailing rate of per diem wages.

To the extent applicable, Contractor shall comply with all requirements of the California Labor Code, including but not limited to, Labor Code sections: 1773.2 (regarding posting wage determinations at each job site); section 1776 (regarding the certification, maintenance, and availability for inspection of payroll records); section 1777.5 (regarding employment of apprentices); section 1810 (regarding a legal day’s work as 8 hours of labor); and section 1775 (regarding penalties for violations). The Contractor shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor under Contractor.

9. **Notices.** All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

To Contractor: Shape Inc.  
5115-A Johnson Drive  
Pleasanton, CA 94588

To City: City Manager  
City of Pleasanton  
P.O. Box 520  
Pleasanton, CA 94566

10. **Miscellaneous Provisions.**

- a. City may terminate this Agreement at any time by mailing a notice to Contractor. Contractor shall be paid for that portion of work or services already completed by Contractor as approved by City.
- b. Contractor acknowledges that time is of the essence regarding the performance of this Agreement.
- c. Contractor shall not assign or transfer this Agreement.
- d. If either City or Contractor waives a breach of this Agreement, such waiver shall not constitute a waiver of other or succeeding breaches of this Agreement.
- e. This Agreement constitutes the entire understanding of the parties.
- f. This Agreement may only be modified by a writing signed by the authorized representative of both parties.
- g. Contractor covenants that it has obtained and will keep in effect during the term of the Agreement all certificates, licenses, including a City Business License, permits or the like required by any federal, state or local regulatory agency in order to perform the work under this Agreement.
- h. Contractor shall comply with all federal, state and local laws, regulations and rules, including but not limited to applicable safety and environmental laws. Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous substances and disposal of hazardous wastes.
- i. Contractor will permit the City to audit, examine and make copies of all contracts, invoices, payrolls and other documents or data relating to this Agreement. Such records shall be maintained for three years from the date of final payment under this Agreement.
- j. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with U.S. federal E-Sign Act of 2000 (15 U.S. Code §7001 et seq.), California Uniform Electronic Transactions Act (Cal. Civil Code §1633.1 et seq.), or other applicable law) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

- k. This Agreement shall be governed by the laws of the State of California, with venue for any action under this Agreement in Alameda County, California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

**CITY OF PLEASANTON**

**CONTRACTOR**

\_\_\_\_\_  
Nelson Fialho, City Manager

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

ATTEST:

Title: \_\_\_\_\_

\_\_\_\_\_  
Karen Diaz, City Clerk

*[If Contractor is a corporation, signatures must  
comply with California Corporations Code §313]*

APPROVED AS TO FORM:

\_\_\_\_\_  
Daniel G. Sodergren, City Attorney

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

Title: \_\_\_\_\_

EXHIBIT A

## SEWER & STORM PUMP REPAIR AND REPLACEMENT

### SCOPE OF SERVICES

The City is requesting an experienced licensed contractor to perform routine and emergency pump repair and replacement services under the direction of the Utilities Division. This work would be performed at any of the City's, sewer or stormwater infrastructure located throughout the City.

All contractors' employees shall comply with all Federal, State, and local laws and regulations governing the installation and testing of electrical equipment and components. All contractors' employees shall comply with all OSHA and City policies regarding the proper use of Lockout/Tagout procedures.

The following outline provides a scope of work for the City's expectations regarding "as needed" pump repair and replacement work for Utilities Division:

1. For repairing Submersible Sewer Pumps at 7 of our Sewer Lift stations in our Collections Systems.
2. For replacing Submersible Sewer Pumps at 7 of our Sewer Lift Stations in our Collections Systems.

### RATE SHEET

The cost quoted below shall include all taxes and all other charges, including travel expenses, and is the cost the City will pay for the term of any contract that is a result of this bid.

Bidder hereby certifies to City that all representations, certifications, and statements made by Bidder, as set forth in this Bid Form and attachments are true and correct and are made under penalty of perjury pursuant to the laws of California.

#### Contractor's Labor Rates (Hourly)

<b>Position Description</b>	<b>Regular Time</b>	<b>Overtime</b>	<b>Emergency Callout</b>
Foreperson,	\$	\$	\$
Journey level:	\$	\$	\$
Apprentice level:	\$	\$	\$
Other:	\$	\$	\$



**UTILITIES – SEWER AND STORM (Continued)**

**RATE SHEET (continued)**

**Contractor's Equipment**

<b>Equipment</b>	<b>Size and Description</b>	<b>Hourly Rate</b>
		\$
		\$

**Note:** Contractor's Equipment that will be used for project, to be charged to the job at an Hourly Rate.

<b>Materials/Rentals</b>	<b>Example</b>	<b>% Mark Up</b>
Materials	Invoicing must be demonstrated as a percentage. Example: Material \$1,000 + 10% (\$100) = \$1,100	%
*Outside Equipment (Rentals)	Invoicing must be demonstrated as a percentage. Example: Outside Equipment \$2,000 + 10% (\$200) = \$2,200	%

\*Rental Equipment must be pre-approved by City Project Manager

Contractor Name:

Signature: \_\_\_\_\_