



Council Meeting: August 19, 2008

SUBJECT: Award of a Contract for Public Works Project Management and Engineering Services (F0807-04)

REPORT IN BRIEF

Approval is requested for the award of a two-year contract in an amount not to exceed \$300,000 to the Associated Infrastructure Management Services (AIMS) Corporation of Los Gatos to provide Public Works project management and engineering services for the Department of Public Works Engineering Division.

BACKGROUND

The Project Administration Section of the Public Works Department Engineering Division has utilized the services of AIMS in the past to provide a level of baseline project management in lieu of a Senior Engineer position. More recently, AIMS staff has been used as Special Project Management for the Sunnyvale Town Center project. The existing contract for services (awarded 7/20/2004, RTC # 04-261) expired on July 31, 2008.

DISCUSSION

AIMS' experience in engineering design, construction support and land development engineering has proven to be extremely useful in addressing issues as they arise in the Town Center Redevelopment Project. AIMS has also been instrumental in assisting the Community Development Director and Director of Public Works in organizing, planning and implementing City staff work related to the project. Additionally, AIMS has served as the coordination point between the City and utility companies and other governmental agencies in obtaining/complying with permits for the project, and in monitoring/reporting on the work of other consultants engaged in the project. In short, AIMS' multi-faceted support has provided the continuity needed to help ensure successful project completion.

The new contract will reflect an updated scope of work reflecting current work tasks specific to the Town Center project, and the two-year time for performance should last through the end of the construction phase of the project. As a specialized professional service contract, this agreement is exempt from competitive bidding, per Section 2.08.070(b)(1) of the Sunnyvale Purchasing Ordinance. It should be noted that any individual performing services under the agreement will be required to file a Statement of Economic Interest (Form 700), as required by the City's Standard Conflict of Interest

Award of a Contract for Public Works Project Management and Engineering Services (F0807-04)
August 19, 2008
Page 2 of 2

Code, Council Policy 7.3.7, and as referenced in Section 6 of the Draft Consultant Services Agreement incorporated as Attachment B.

FISCAL IMPACT

Total cost for the two year contract will not exceed \$300,000. The rate will be \$90.00 per hour (last increased in June, 2007). Funds are available in Town Center Projects No. 826620 (Town Center Construction – Public Works Services) and 826700 (Town Center Site Investigation/Remediation of Haz Mat).

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

RECOMMENDATION

It is recommended that Council award a two-year contract, in substantially the same form as the attached draft and in an amount not to exceed \$300,000, to Associated Infrastructure Management Services (AIMS) Corporation for Public Works project management and engineering services.

Reviewed by:

Mary J. Bradley, Director of Finance

Prepared by: Pete Gonda, Senior Management Analyst

Reviewed by:

Marvin Rose

Director of Public Works

Approved by:

Amy Chan

City Manager

Attachments

- A. Scope of Project Management and Engineering Services
- B. Draft Consultant Services Agreement

ATTACHMENT "A"

Scope of Special Project Management and Engineering Services

AIMS Corporation will make available the services of Donald C. Wimberly, P.E., for work as a Special Project Manager for work related to the Sunnyvale Town Center (STC) project, and other work as may be assigned. The following tasks are anticipated:

1. Assist the Assistant Director of Public Works, and Community Development Director, and other managers in organizing, planning, and implementing City staff work related to the STC project.
2. Accomplish coordination of the City staff efforts in relationship to the design and construction oversight of the STC project.
3. Accomplish appropriate administrative tasks to support the oversight of STC project
4. Conduct needs assessments and alternatives analysis as needed.
5. Coordinate with other agencies, utility companies, and regulatory agencies to assist with obtaining and complying with permits for the STC project.
6. Monitor and report on the work of other consultants engaged in the STC project.
7. Conduct field investigations and studies as may be required.
8. Maintain project and program records.
9. Provide regular reports briefings to managers and other staff regarding progress of the STC project.
10. Organize and conduct meetings as may be needed.
11. Review and comment on plans, specifications, and studies of the STC consultants.
12. Coordinate the review of construction submittals by design consultants and customer departments.
13. Attend and/or conduct City and developer team meetings as appropriate.
14. Provide assistance to City staff as may be required by them during the STC project.
15. Prepare reports, recommendations, and supporting documentation associated with the STC project.
16. Provide consultation and advice as requested on City procedures, practices, and administrative policies.
17. Assist department staff and managers with STC project in the general area of Public Works construction and operations.
18. Respond to citizen inquiries as appropriate.
19. Assist the City's communications staff with public information program as related to the STC project.
20. Perform other duties as may be assigned.

DRAFT

**CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND ASSOCIATED
INFRASTRUCTURE MANAGEMENT SERVICES (AIMS), INC.
FOR PUBLIC WORKS MANAGEMENT SERVICES**

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and ASSOCIATED INFRASTRUCTURE MANAGEMENT SERVICES (AIMS) INC., a California corporation ("CONSULTANT").

WHEREAS, CITY is in need of specialized services in relation to public works project management and engineering services; and

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 qualified individuals to provide services in accordance with Exhibit "A" attached and incorporated herein by this reference. CONSULTANT shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be for two (2) years, beginning upon the execution of this Agreement, unless otherwise terminated. 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

CITY agrees to pay CONSULTANT at the rate of \$90.00 per hour. Total compensation shall not exceed Three Hundred Thousand and no/100 Dollars (\$300,000.00). CONSULTANT shall submit invoices to CITY no more frequently than monthly for services performed during the preceding month. Payment shall be made within twenty (20) 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. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee 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, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in Exhibit "A", caused in whole or in part by any negligent act or omission of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

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 and endorsements as specified in Exhibit "C".

12. CITY Representative

Hira Raina, Assistant City Engineer, 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

Donald Wimberly, P.E., 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 shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY: Hira Raina, Engineering Division
Public Works Department
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: Donald Wimberly, P.E.
The AIMS Corporation
P.O. Box 800
Los Gatos CA 95031-0800

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

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

16. Termination

If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

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.

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 by writing signed by all parties.

18. 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. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SUNNYVALE ("CITY")

ASSOCIATED INFRASTRUCTURE
MANAGEMENT SERVICES, INC.
("CONSULTANT")

By _____
City Manager

By _____

APPROVED AS TO FORM:

Name and Title

By _____
City Attorney

By _____

ATTEST:

By _____
City Clerk

EXHIBIT "C" INSURANCE REQUIREMENTS

CONSULTANT shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

CONSULTANT shall take out and maintain during the life of the contract **Workers' Compensation and Employer's Liability Insurance** for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

CONSULTANT shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect CONSULTANT, CITY, its officials, officers, directors, employees and agents from claims to the extent caused by the professional services performed under the contract, whether such services are performed by CONSULTANT or employees, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The Commercial General Liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from CONSULTANT's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy shall include contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract. *Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.*
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.