

**Council Meeting: February 23, 2010**

SUBJECT: Award of Contract for a Land Use and Transportation Element Update Environmental Impact Report (EIR) and Climate Action Plan (CAP) for the Department of Community Development (F0908-17) and Approve Budget Modification No. 23

BACKGROUND

Approval is requested to award a contract in the amount of \$499,732, including applicable taxes, to Pacific Municipal Consultants, dba PMC, to prepare a Land Use and Transportation Element Update Environmental Impact Report (EIR) and related Climate Action Plan (CAP), and to approve a 10% project contingency in the amount of \$49,973. Additional approval is requested for Budget Modification No. 23 to appropriate funds to cover the cost of the studies. These studies will be funded through a combination of grant revenues and funds that are currently budgeted for other related studies.

DISCUSSION

A Request for Proposal (RFP) was developed by Community Development, Public Works and Finance staff. The RFP process was selected because, unlike an Invitation for Bids, it allows for consideration of factors in addition to cost during proposal evaluation. In this instance, staff determined that proposals would be evaluated based upon the following criteria:

- Adherence to the Requirements of the Request for Proposal
- Work Plan
- Project Management
- Qualifications and Prior Experience
- References
- Total Cost to the City

On August 14, 2009 Request for Proposals (RFP) No. F0908-17 was issued and directly distributed to nine firms known to have participated in similar projects. In addition, the RFP was advertised on the City's website and notification of the project was distributed to other potential consultants through the Onvia DemandStar public procurement network. Thirty-five firms requested proposal documents. On October 14, 2009 six responsive proposals were received, as follows:

- Pacific Municipal Consultants, Rancho Cordova, California
- EDAW, Inc. Sacramento, California

- ICF Jones and Stokes, Sacramento, California
- CirclePoint, San Francisco, California
- Design Community and Environment, Berkeley, California
- David J. Powers and Associates, San Jose, California

The evaluation committee was led by the Department of Community Development and included representatives of the Departments of Public Works and Finance. Proposed costs for the project ranged from \$524,798 to \$607,984 depending upon each Proposer's understanding of the City's needs and its approach to meeting those needs.

Following a comprehensive review of the written proposals, three proposers were selected to attend an onsite interview to discuss their proposals. The committee unanimously agreed that the proposal submitted by PMC offers the best value to the City for the following reasons:

- Consultant team was the most qualified for preparation of an EIR for a Land Use and Transportation Element (LUTE)
- PMC had the most complete experience and qualifications for preparing a Climate Action Plan (CAP)
- PMC clearly articulated a program for coordinating the project including: preparation of the LUTE, EIR, and CAP along with coordinating staff, consultant and community efforts.

During the evaluation period, staff determined which LUTE methodology would best fit the City's needs, which resulted in the requested contract award amount. Based upon the information presented above, staff recommends award of contract to the firm of Pacific Municipal Consultants to prepare a Land Use and Transportation Element Update EIR and CAP report.

FISCAL IMPACT

The total cost of the contract and the 10% contingency is \$549,705. \$100,000 of this amount has already been appropriated by Council in a recent action that funded the Climate Action Plan project (RTC 10-024). This leaves \$449,705 left to be appropriated.

When the work plan was prepared for the LUTE update staff advised the City Council that the budget was not known and that a budget modification would be presented at the time of EIR consultant selection. Currently the city has two projects with funds for general plan sub-element updates: Update of Mandated General Plan Sub-Elements (825700) and Update of Non-Mandated General Plan Sub-Elements (825710). The City also has budgeted \$300,000 for the preparation of the Peery Park Specific Plan. Although this study was a priority study issue for the City Council, the City Manager has deferred work on this

item due to the overall issues with the General Fund budget. Staff recommends that the funds reserved for Peery Park Specific Plan, along with the funds for general plan sub-element updates be combined to fund the LUTE EIR and related activities. At such time as additional funds become available, staff would return to the City Council to fund the Peery Park Specific Plan special project and commence work on that Planning effort. Budget Modification No. 23 has been prepared to re-appropriate funds from the Peery Park Specific Plan project and the Update of the Mandated/Non-Mandated General Plan Sub-Element Projects to provide funding for the LUTE study.

**BUDGET MODIFICATION NO. 23
FISCAL YEAR 2009/2010**

	<u>Current</u>	<u>Increase (Decrease)</u>	<u>Revised</u>
General Fund			
Expenditures:			
New Project - Land Use and Transportation Element Study	\$0	\$449,705	\$449,705
Project 827480 – Peery Park Specific Plan	\$300,000	(\$300,000)	\$0
Project 825710 – Update of Non-Mandated General Plan Sub-Elements	\$73,197	(\$73,197)	\$0
Project 825700 – Update of Mandated General Plan Sub-Elements	\$113,959	(\$76,508)	\$37,451

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:

1. Award a contract, in substantially the same form as the attached draft and in the amount of \$499,732, including applicable taxes, to Pacific Municipal Consultants, to prepare a Land Use and Transportation Element Update Environmental Impact Report (EIR) and a Climate Action Plan Report;
2. Approve a project contingency in the amount of \$49,973; and
3. Approve Budget Modification No. 23.

Reviewed by:

Mary J. Bradley, Director of Finance
Prepared by: Pete Gonda, Senior Management Analyst, Finance

Reviewed by:

Hanson Hom
Director, Community Development

Reviewed by:

Marvin Rose
Director, Public Works

Approved by:

Gary M. Luebbbers
City Manager

Attachments

- A. Draft Consultant Services Agreement

DRAFT
CONSULTANT SERVICES AGREEMENT BETWEEN THE
CITY OF SUNNYVALE
AND PACIFIC MUNICIPAL CONSULTANTS, DBA PMC
TO CONDUCT A LAND USE AND TRANSPORTATION ELEMENT UPDATE
ENVIRONMENTAL IMPACT REPORT (EIR) AND CLIMATE ACTION PLAN (CAP)

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and PACIFIC MUNICIPAL CONSULTANTS, DBA PMC, California Corporation ("CONSULTANT").

WHEREAS, CITY is in need of a Land Use and Transportation Element Update Environmental Impact Report (EIR) and Climate Action Plan (CAP); 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 services in accordance with Exhibit "A", attached and incorporated by reference, which consist of the following documents: Request for Proposal No. F0908-17 and all requirements, specifications and terms and conditions contained therein and CONSULTANT'S proposal response.

Any and all obligations of the CITY and the CONSULTANT are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

2. Time for Performance

Time is of the essence in the performance of the Agreement. If services cannot be performed at the specified time, CONSULTANT shall promptly notify CITY of the earliest possible date for performance of the services. Notwithstanding such notice, if CONSULTANT, for any reason whatsoever, fails to perform the services within the time specified, CITY may terminate the Agreement or any part thereof without liability except for services previously performed and accepted.

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 a total not to exceed amount of Four Hundred Ninety Nine Thousand Seven Hundred Thirty Two and no/100 dollars (\$499,732.00) for the following services:

1. LUTE EIR - \$399,732.00
2. Climate Action Plan - \$100,000.00

CONSULTANT shall submit invoices to CITY to be paid 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. 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 Consultant

CONSULTANT is acting as an independent consultant 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, 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 "B" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "B."

12. CITY Representative

Gerri Caruso, 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

Patrick Angell, Project Director, 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 shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY: Gerri Caruso, Principal Planner
Community Development Planning
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: Patrick Angell, Project Director
Pacific Municipal Consultants dba PMC
500 12th Street, Suite 240
Oakland, CA 94607

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 after written notification of failure to pay.

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.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

PACIFIC MUNICIPAL CONSULTANTS, dba PMC
("CONSULTANT")

By _____
City Attorney

By _____

Name and Title

Name and Title

EXHIBIT "B"

INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the Agreement 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 CONSULTANT, its 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 for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. ISO Occurrence Form CG 0001 is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. **Workers' Compensation** and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.
4. **Errors and Omissions** Liability Insurance appropriate to CONSULTANT's profession: \$1,000,000 per occurrence.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by CITY. 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** and **automobile liability** policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of CONSULTANT; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents or volunteers, except as follows: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

2. For any claims related to this project, CONSULTANT's insurance shall be primary. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents and volunteers shall be excess of 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 CITY, its officers, officials, employees, agents or volunteers.
4. 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 CITY.

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 CITY.

Verification of Coverage

CONSULTANT shall furnish to CITY original Certificate(s) of Insurance and endorsements effecting the coverage required. The Certificate(s) shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by CITY prior to commencement of work.