

**Council Meeting: April 27, 2010****SUBJECT: Award of Contract for Receiving Water Ammonia Characterization and Associated Laboratory Services (F0902-79)****BACKGROUND**

Approval is requested for the award of a two (2) year contract in an amount not to exceed \$139,456 to Pacific EcoRisk of Fairfield California, for receiving water ammonia characterization and associated laboratory services, as required by the Public Works Environmental Services Division. Approval is also requested for authorization to extend for one additional two-year period, provided services and pricing are acceptable to the City.

The Water Pollution Control Plant NPDES Permit (Order No. R2-2009-0061) Special Study Provision VI.C.2.e, Table 11 requires the City to submit a study plan, to implement the plan, and to report on the results of a Receiving Water Ammonia Characterization Study. The City submitted the required Study Plan on December 1, 2009. The primary focus of the study is to confirm whether the receiving waters, as influenced by the WPCP discharge, are in compliance with applicable unionized ammonia water quality objectives.

The Water Pollution Control Plant is currently having an evaluation performed as to the possible causes for low level effluent toxicity by conducting Toxicity Identification Evaluation (TIE) studies. Effluent TIE studies are highly complex and costly, and to some extent are related to the Ambient Ammonia Characterization study for which this contract is being sought. In brief, the results of the Ambient Ammonia Characterization Study (AACS) will help to develop, through later modeling, the location within Moffett Channel where overall NPDES compliance should be determined. Additionally, results from the AACS and modeling exercise could prove useful should the City choose to argue for dilution credits, which in turn if granted, could render moot any low level effluent toxicity issue.

DISCUSSION

A Request for Proposal (RFP) was developed by Finance and Public Works 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:

- Experience in Conducting Water Studies in an Estuarine Environment
- Background and Experience of Project Manager and Team Technical Staff
- Overall Understanding of Project and Quality of Proposal
- Project Cost

On March 17, 2010 Request for Proposals (RFP) No. F0902-79 was issued and directly distributed to four 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. Ten firms requested proposal documents. On April 7, 2010 two responsive proposals were received, as follows:

- Pacific EcoRisk of Fairfield, California
- Kinnetic Laboratories Incorporated of Santa Cruz, California

Evaluations were performed by both WPCP staff and Eisenberg, Olivieri & Associates (EOA), an engineering consulting firm the City contracts with that has background in the test methodologies proposed by the submitting laboratories.

Evaluators determined that, while both contractors are highly qualified to perform the required work and have a good understanding of the specific needs of the project, the proposal submitted by Pacific EcoRisk offers the best value to the City. Therefore staff recommends award to Pacific EcoRisk.

FISCAL IMPACT

Budgeted funds are available in Wastewater Treatment Program 344.

PUBLIC CONTACT

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

RECOMMENDATION

It is recommended that Council:

1. Award a contract, in substantially the same form as the attached draft and in the amount of \$139,456, including applicable taxes, to Pacific EcoRisk, for receiving water ammonia characterization and associated laboratory services; and
2. Authorize the City Manager to extend the contract for two additional years, provided services and pricing are acceptable to the City.

Reviewed by:

Mary J. Bradley, Director of Finance

Prepared by: Pete Gonda, Senior Management Analyst, Finance

Reviewed by:

Marvin Rose

Director, Public Works

Approved by:

Gary M. Luebbers

City Manager

Attachments

A. Draft Services Agreement

ATTACHMENT A

DRAFT

SERVICES AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND PACIFIC ECORISK FOR RECEIVING WATER AMMONIA CHARACTERIZATION AND ASSOCIATED LABORATORY SERVICES

THIS CONTRACT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California ("CITY"), and PACIFIC ECORISK, INC, a California Corporation ("CONTRACTOR").

RECITALS:

The parties to this Contract have mutually covenanted and agreed, as follows:

1. Contract Documents. The complete Contract consists of the following documents which are incorporated by reference: Request for Proposals No. F0902-79, including Proposer Response Pages completed by CONTRACTOR, including attachments; and all required insurance certificate(s) and endorsement(s). The documents comprising the complete contract are collectively referred to as the Contract Documents. Any and all obligations of CITY and CONTRACTOR are fully set forth and described in the Contract Documents.

2. The Work. CONTRACTOR agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform all work as required by, and in the manner designated in, and in strict conformity with, the specifications, terms and conditions set forth in Request For Proposal No. F0902-79.

It is understood and agreed that the work performed, as required by the Contract Documents, be completed under the sole direction and control of the CONTRACTOR, and subject to inspection and approval of the City.

3. Contract Price. CITY agrees to pay CONTRACTOR total compensation of One hundred thirty nine thousand four hundred fifty five and 35/100 dollars (\$139,455.35). CONTRACTOR 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.

4. Permits; Compliance with Law. CONTRACTOR shall, at its own expense, obtain all necessary permits and licenses for the completion of the work, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health and safety.

5. Extra or Additional Work and Changes. At any time during the contract term, CITY shall have the right to request alterations, additions to, or deviations or omissions from the Contract Documents; and the rates for such additional or changed work shall be adjusted by a fair and reasonable valuation, agreed to in writing by CITY and CONTRACTOR. CONTRACTOR shall perform no extra or additional work or alter or deviate from the work specified herein unless agreed to in writing by CITY. Extra work to which CITY has not agreed in advance in writing will not be compensated by City.

6. Contract Term. The term of this contract shall be two (2) years from the date of contract execution, unless otherwise terminated. Contract may be renewed for one subsequent two-year term, at the option of the City, provided pricing and services remain acceptable to the City.

7. Termination. If CONTRACTOR 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 CONTRACTOR. If CITY fails to pay CONTRACTOR, CONTRACTOR 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 CONTRACTOR. In the event of such termination, CONTRACTOR 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. CONTRACTOR shall present CITY with any work product completed at that point in time.

8. 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 sent by commercial courier, addressed as follows:

To CITY: Ms. Lorrie Gervin
Environmental Division Manager
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONTRACTOR: Mr. R. Scott Ogle, Ph.D.
CEO & Special Projects Director
Pacific EcoRisk, Inc.
2250 Cordelia Road
Fairfield, CA 94534

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone, email, or facsimile transmission, to accomplish timely communication. However, to constitute effective notice of Contract termination, written confirmation of a telephone conversation or an original of a facsimile or email 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 three 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.

9. Assignment. Neither party shall assign or sublet any portion of the Contract without the prior written consent of the other party.

10. Insurance.

CONTRACTOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "A" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "A."

11. Indemnification. CONTRACTOR shall indemnify, defend and hold harmless CITY and 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 work described in the Contract Documents, caused in whole or in part by any negligent act or omission of CONTRACTOR, 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 CITY.

12. CONTRACTOR'S Guarantee. CITY shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to the work site or other City-owned equipment or property any part thereof or in, on or about the same during CONTRACTOR'S performance of work under this contract.

CONTRACTOR unqualifiedly guarantees the first-class quality of all work performed by CONTRACTOR, or by any subcontractor, under this Contract. CONTRACTOR also unqualifiedly guarantees that the work performed by CONTRACTOR will conform with the Contract Documents and any written authorized deviations therefrom. In case of any defect in work, CONTRACTOR will forthwith remedy such defect or defects without cost to CITY.

13. Liquidated Damages. If Contractor fails to complete, within the time agreed-upon for such completion, Contractor shall become liable to CITY for liquidated damages in the sum of Two Hundred Fifty Dollars (\$250.00), per day for the first ten (10) days and five hundred dollars (\$500.00) per day thereafter for each calendar day during which work was delayed beyond the agreed-upon time. The amount specified as liquidated damages is presumed to be the amount of damage sustained by CITY since it would be impracticable or extremely difficult to fix the actual damage. The amount of liquidated damages may be deducted by CITY from moneys due Contractor, or its assigns and successors at the time of completion.

IN WITNESS WHEREOF, the parties have executed this contract.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

PACIFIC ECORISK, INC.
("CONTRACTOR")

By _____
City Attorney

By _____

Title and Date

EXHIBIT "A"
INSURANCE REQUIREMENTS

CONTRACTOR 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.

CONTRACTOR 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.

CONTRACTOR shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect CONTRACTOR, 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 CONTRACTOR 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 CONTRACTOR'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.