



**Agency Meeting: January 25, 2011**

**SUBJECT: Authorization to Modify an Existing Contract for Environmental Consulting Services for the Sunnyvale Town Center Redevelopment Project (F1012-61)**

**BACKGROUND**

Approval is requested to modify an existing two-year contract with Ground Zero Analysis, Inc. of Escalon for “on-call” environmental consulting services for the Sunnyvale Town Center Redevelopment Project by increasing the not-to-exceed amount from \$50,000 to \$125,000, as required by the Office of the City Attorney.

**DISCUSSION**

Ground Zero Analysis, Inc. was awarded a two-year contract on August 24, 2010, under the City Manager’s contract award authority, in an amount not to exceed \$50,000, for ongoing environmental consulting services involving the assessment of and response to environmental remediation at the Sunnyvale Town Center Redevelopment site.

Treatment toward remediation of hazardous materials contamination at the project site has been done. Work to date was conducted on a voluntary basis with regulatory oversight by the Regional Water Quality Control Board (RWQCB). The recent focus has been on mapping the extent of the impact, which is needed to prepare a final remediation plan. This Remedial Action Plan (RAP) will establish the specific limits and monitoring protocol.

**FISCAL IMPACT**

Total cost to the City for the two-year contract for “on-call” environmental consulting services will not exceed \$125,000. Budgeted funds are available in Capital Project No. 826700 (Town Center Site Investigation/Remediation of Hazmat). Approximately \$2 million remains in the project for this and other remediation costs. To the extent additional expenses are required over and above the remaining budgeted amount, a Budget Modification may be necessary in the future to complete the work.

It should be noted that this expense is subject to the 2010 Amended Disposition Development and Owner Participation Agreement (ADDOPA) cost share provision which requires a 50% split between the developer and the Agency.

**PUBLIC CONTACT**

Public contact was made by posting the Agency 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 the Agency amend the existing two-year contract with Ground Zero Analysis, Inc. for on-call environmental consulting services, in substantially the same form as the attached draft amendment, by increasing the not-to-exceed amount from \$50,000 to \$125,000.

Reviewed by:

Grace K. Leung, Treasurer, Redevelopment Agency  
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

Marvin Rose, Director of Public Works

Reviewed by:

David Kahn, General Counsel, Redevelopment Agency

Approved by:

Gary M. Luebbbers  
Executive Director, Redevelopment Agency

**Attachments**

- A. Draft Consultant Services Agreement Amendment
- B. Consultant Services Agreement (Exhibit A)

**ATTACHMENT A  
DRAFT  
FIRST AMENDMENT TO CONSULTANT SERVICES AGREEMENT  
BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE  
AND GROUND ZERO ANALYSIS, INC. FOR ON-CALL  
ENVIRONMENTAL CONSULTING SERVICES**

This First Amendment to Consultant Services Agreement, dated \_\_\_\_\_, 2011, is by and between the REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE, a public body, corporate and politic, ("AGENCY") and GROUND ZERO ANALYSIS, INC., a California corporation ("CONSULTANT").

WHEREAS, on August 24, 2010, CITY of SUNNYVALE and CONSULTANT entered into a Consultant Services Agreement (attached and incorporated as Exhibit "A") whereby CONSULTANT would provide specialized services in relation to providing on-call environmental consulting services for the Sunnyvale Town Center Redevelopment Project;

WHEREAS, the parties wish to amend the Agreement to clarify that the AGENCY, rather than the CITY, is the authorized party to engage the services of CONSULTANT;

WHEREAS, the parties now agree that an Amendment to said Agreement is advisable to extend services of CONSULTANT in an amount not exceed the sum below;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AMENDMENT TO CONSULTANT SERVICES AGREEMENT:

Delete Section 4 in its entirety and replace with the following:

**Section 4. Compensation**

CITY agrees to pay CONSULTANT at the hourly rates shown on the FY 2010 Schedule of Fees and Charges (attached and incorporated as Exhibit "B"). Total compensation shall not exceed One Hundred Twenty-five Thousand and No/100 Dollars (\$125,000.00). CONSULTANT shall submit invoices to CITY no more frequently than monthly for services provided to date. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY'S Office of the City Attorney.

All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Agreement First Amendment.

ATTEST:

By \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney

REDEVELOPMENT AGENCY of the  
CITY OF SUNNYVALE ("AGENCY")

By \_\_\_\_\_  
Executive Director

GROUND ZERO ANALYSIS, INC.  
("CONSULTANT")

By \_\_\_\_\_  
Russell W. Juncal, Principal

**CONSULTANT SERVICES AGREEMENT  
BETWEEN THE CITY OF SUNNYVALE AND GROUND ZERO ANALYSIS,  
INC. FOR ON-CALL ENVIRONMENTAL CONSULTING SERVICES**

THIS AGREEMENT dated August 24<sup>th</sup>, 2010 is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and GROUND ZERO ANALYSIS, INC., a California corporation ("CONSULTANT").

WHEREAS, CITY is in need of specialized services in relation to providing on-call environmental consulting services for the Sunnyvale Town Center Redevelopment Project; 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. CONSULTANT shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be for a two (2) year period, beginning on the date of Agreement execution, 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 hourly rates shown on the FY2010 Schedule of Fees and Charges (Exhibit "B"). Total compensation shall not exceed Fifty Thousand and No/100 Dollars (\$50,000.00). CONSULTANT shall submit invoices to CITY no more frequently than monthly for services provided to date. Payment shall be made 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 for services 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.

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

Kathryn Berry, Senior Assistant City Attorney, 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

Russell W. Juncal, Principal Hydrogeologist, 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: Kathryn Berry, Senior Assistant City Attorney  
Office of the City Attorney  
CITY OF SUNNYVALE  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

To CONSULTANT: Russell W. Juncal, Principal Hydrogeologist  
GROUND ZERO ANALYSIS, INC.  
1714 Main Street  
Escalon, CA 95320

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

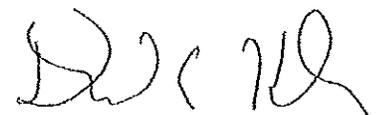
Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SUNNYVALE ("CITY")

GROUND ZERO ANALYSIS, INC.  
("CONSULTANT")

BY:



David E. Kahn, City Attorney

BY:



Russell W. Jurcal, Principal Hydrogeologist

## ATTACHMENT A

### Scope of Consulting Services

Ground Zero Analysis, Inc. will provide environmental consulting services related to the Downtown Environmental Cleanup Project on an as-requested basis for the City of Sunnyvale Redevelopment Agency (RDA). Ms. Kathryn Berry, Senior Assistant City Attorney will provide work authorization verbally or in writing.

Consulting services are anticipated to include:

- Review of technical reports, calculations, correspondence, data and physical materials.
- Analysis and comment on data, work product, costs and approach of other consultants and contractors.
- Observation and documentation of on-site activities by other consultants and contractors.
- Discussions and briefings with RDA representatives regarding project status, strategy, work product, schedules or other relevant elements of the project.
- Production of written reports, memos or correspondence documenting project work.
- Preparation for and attendance at meetings.

Ground Zero Analysis, Inc. or its pre-approved subcontractors may provide other services related to the project upon request of the RDA.

# ATTACHMENT B

## GROUND ZERO ANALYSIS, INC.

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1714 Main Street  
Escalon, California 95320  
Telephone: (209) 838-9888  
Facsimile: (209) 838-9883

### SCHEDULE OF CHARGES – Sunnyvale Town Center Consulting

#### PERSONNEL

Principal Hydrogeologist (RWJ)	175/hr
Principal (Registered) Engineer (GR)	165/hr
Registered Geologist/Hydrogeologist (GS, EP, SB, ROJ)	165/hr
Senior Geologist/Engineer (JP, NK)	130/hr
Staff Geologist/Engineer (JV)	100/hr
Data Mgmt/GIS Specialist (AB, CLB)	85/hr
Technician (AS)	80/hr
Draftsman (JW)	80/hr
Administrative support (CB, BV)	70/hr

#### TRAVEL/PER DIEM

No travel charges will be invoiced to this project.

#### EQUIPMENT CHARGES

Charges for the use of company owned equipment and inventory materials will be in accordance with the attached schedule.

#### RENTALS/SUBCONTRACTORS/PURCHASES AND EXPENSES

Unless otherwise quoted, charges for outside services and expenses including, but not limited to, laboratory analysis, drilling services, telephone, postage, permit fees, construction services and materials, printing and photographic reproduction, rented vehicles and equipment, transportation on public carriers and shipping charges will be billed at cost plus 10%.

#### INFLATIONARY CLAUSE

Subject to 45 day prior notification, Ground Zero Analysis reserves the right to adjust its rate schedule.

## INVOICING AND PAYMENTS

Upon credit approval, the following invoicing and payment terms will apply: Services performed will be billed monthly in accordance with applicable proposals. Invoices will accurately itemize the services that are being billed, including period of performance. For time and materials work, invoices will provide a breakdown of direct labor, indirect costs, travel, equipment, materials and supplies, and subcontract work. Invoices will be submitted in duplicate and shall be payable upon receipt.

## EXHIBIT "B"

### GROUND ZERO ANALYSIS, INC.

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1714 Main Street  
Escalon, California 95320  
Telephone: (209) 838-9888  
Facsimile: (209) 838-9883

### SCHEDULE OF CHARGES – Sunnyvale Town Center Consulting

#### PERSONNEL

Principal Hydrogeologist (RWJ)	175/hr
Principal (Registered) Engineer (GR)	165/hr
Registered Geologist/Hydrogeologist (GS, EP, SB, ROJ)	165/hr
Senior Geologist/Engineer (JP, NK)	130/hr
Staff Geologist/Engineer (JV)	100/hr
Data Mgmt/GIS Specialist (AB, CLB)	85/hr
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