



Council Meeting: February 28, 2012

SUBJECT: Approval to Increase Contract Contingency in Conjunction with the Land Use and Transportation Element Environmental Impact Report and Associated Climate Action Plan and Approval of Budget Modification No. 26 (F1101-42)

BACKGROUND

Approval is requested to increase the Council awarded contingency for a contract with Pacific Municipal Consultants (PMC) to prepare a Land Use and Transportation Element Update Environmental Impact Report (EIR) and related Climate Action Plan (CAP) for the Department of Community Development. The requested increase in contingency will be from \$49,973 to \$81,973, an increase of \$32,000 for additional services as described below. Approval is also requested for Budget Modification No. 26 to provide additional funding for this project.

DISCUSSION

On February 23, 2010 (RTC No. 10-052), a contract was awarded to Pacific Municipal Consultants (PMC) to prepare the environmental impact report (EIR) for the Land Use and Transportation Element and an associated Climate Action Plan (CAP). Along with preparing the EIR and CAP, the consultant team's scope of work includes preparing the necessary technical studies, assisting staff in the public outreach process and coordinate review by the public and interested agencies. The amount of the contract totals \$499,732, with a contingency of \$49,973. The City Council also approved a Budget Modification at that time to provide funding for the project.

The consultant work is still progressing. The major remaining work item consists of preparing the EIR for the LUTE which includes a city-wide General Plan level traffic analysis of existing and future conditions. Approximately \$32,700 of the budgeted contingency has been allocated for additional work for the following items:

- Additional quantification of the CAP policies and measures based on extensive reorganization and modification of the policies by the Horizon 2035 Committee; and
- Revisions to the calculations of greenhouse gas (GHG) emissions and additional traffic modeling due to necessary adjustments to existing and

projected employment based on more recent economic data and forecasts.

Subsequent to the award of contract and start of work for this project, recently published CEQA case law will require expansion of the draft EIR analysis to be in lawful compliance. The findings of the Sunnyvale West Neighborhood Association v. City of Sunnyvale Council (2010) indicate that an “Existing Plus Project” impact analysis needs to be included in the EIR. The “Existing Plus Project” scenario looks at the existing conditions and adds the impacts of the project. It does not include any projected growth, just existing conditions (as measured today) and the project. PMC has submitted a Request for Contract Modification dated November 9, 2011 for \$36,321 to perform the additional traffic, air quality and noise impact analyses and additional staff time to incorporate the expanded data into the draft EIR.

With approval of the budget modification, the total awarded contingency would increase to \$81,973. After subtracting the contingencies allocated to date, remaining funds will total \$49,273. This amount will fund the “Existing Plus Project” impact analysis as well as reserve a remaining contingency balance of \$12,952 for unexpected work that may arise during the EIR review and LUTE and CAP adoption process.

FISCAL IMPACT

The necessary funds for the additional traffic analysis will be re-appropriated from existing operating and project budgets. Budget Modification No. 26 has been prepared to re-appropriate \$25,000 from the Transportation and Traffic Services operating program and \$7,000 from the General Plan Updates project (Project 825700) to the Land Use and Transportation Study project (Project 828690). The allocation of funds from these two sources will reduce available funds for other projects or studies and diminish the ability to respond to other traffic and general plan service needs during this fiscal year.

BUDGET MODIFICATION NO. 26
FISCAL YEAR 2011/2012

| | <u>Current</u> | <u>Increase</u> <u>(Decrease)</u> | <u>Revised</u> |
|---|----------------|--------------------------------------|----------------|
| General Fund | | | |
| Expenditures: | | | |
| Project 828690 – Land Use and Transportation Study | \$308,570 | \$32,000 | \$340,570 |
| Activity 119160 – Geometric, Streetlight, and Other Design | \$86,712 | (\$25,000) | \$61,712 |
| Project 825700 – General Plan Updates | \$98,949 | (\$7,000) | \$91,949 |

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. Increase the contingency awarded on this project from \$49,973 to \$81,973 an increase of \$32,000; and
2. Approve Budget Modification No. 26 to provide additional funding for this project.

Reviewed by:

Grace K. Leung, Director of Finance
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

Hanson Hom
Director of Community Development

Reviewed by:

Kent Steffens
Director of Public Works

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Change Order to Purchase Order
- B. Consultant Services Agreement



| | | |
|--|---------------------------------|--|
| ORDERED FROM 03229 - 004 (916) 361-8684 PMC 2729 Prospect Park Dr Ste 220 Rancho Cordova, CA 95670 | ORDER DATE | BILL TO: City of Sunnyvale Finance Department Accounts Payable PO Box 3707 Sunnyvale, CA 94088-3707 |
| | EFFECTIVE DATE 3/12/2010 | |
| | EXPIRATION DATE 12/31/2012 | |
| | CONTRACT AMOUNT \$549,705.00 | |
| REQUISITIONING DEPARTMENT (1504) CDD/Planning | FOB | FREIGHT CHARGES |
| | PAYMENT TERMS BELOW | BID NO |

| ITEM | DESCRIPTION | UNIT | UNIT COST |
|------|--|------|-----------|
| 1 | Provide Land Use and Transportation Element Update Environmental Impact Report (EIR) and Climate Action Plan (CAP) for the City of Sunnyvale Department of Community Development per Request For Proposals F0908-17 specifications, terms and conditions, proposers reponse and attached Consultant Services Agreement dated March 8, 2010, which are incorporated herein by this reference. Awarded by City Council 2/23/2010, RTC#10-052 Requisition Number: RQ005247 Change Order #1: Request for contract modification dated 11/12/2010 is incorporated herein by this reference. Contract amount is unchanged. | DLR | \$1.0000 |
| 2 | Change Order #2: Add project contingency in the amount of \$49,973. Change Order #3: Extend expiration dated to 12/31/2012. Change Order #4 - Increase contingency by \$32,000.00, from \$49,973.00 to \$81,973.00 Awarded by Council 2/28/2012, RTC # _____ Purchase Requisition #RQ009145 | DLR | \$1.0000 |

| AUTHORIZED DEPARTMENT(S) | | |
|--------------------------|--------------|--------------|
| NO | DEPT NAME | RELEASE AMT |
| 1504 | CDD/Planning | \$549,705.00 |



DOCUMENT TERMS

Invoices must be sent directly to Accounts Payable at the address above and must reference the purchase order number. Failure to comply will result in a delay in payment processing.

BUYER:

Howard, Dreama

PHONE (408) 730-7396

FAX (408) 730-7710

**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 March 8, 2010, 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 applicable 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 designated 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: Philip O. Carter, President
Pacific Municipal Consultants dba PMC
2729 Prospect Park Drive, Suite 220
Rancho Cordova, CA 95670

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

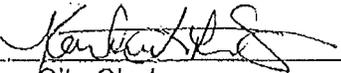
This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

18. Miscellaneous

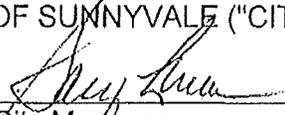
Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with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

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

By 
City Clerk

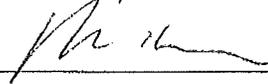
CITY OF SUNNYVALE ("CITY")

By 
City Manager

APPROVED AS TO FORM:

By 
City Attorney

PACIFIC MUNICIPAL CONSULTANTS, dba PMC
("CONSULTANT")

By 

Philip O. Carter, President
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 claim basis.

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 designated 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 designated 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

designated 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 designated 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.