

**AGENDA ITEM** 7

- ☐ Public Hearing
- ☐ Ordinance
- ☒ Consent Calendar
- ☐ Discussion/Transaction

WALNUT CITY COUNCIL**AGENDA DATE: JULY 26, 2017**

TO: Mayor Su and Council Members

VIA: Robert Wishner, City Manager *RW*
Tom Weiner, Director of Community Development *Tw*

FROM: Derrick Womble, Senior Management Analyst *DW*

SUBJECT: First Amendment to the Agreement for Professional Services between the City of Walnut and ECORP Consulting, Inc.

RECOMMENDATION:

It is recommended that the City Council:

1. Approve the attached First Amendment to the Agreement for Professional Services between the City of Walnut and ECORP Consulting, Inc;
2. Appropriate an additional \$70,000 from the General Fund reserve to account number 01-5000-6216;
3. Authorize the City Manager to execute and administer said Amendment in substantially the form attached, and in such final form as approved by the City Attorney; and
4. Issue a Change Order to ECORP Consulting, Inc. in the amount of \$70,000.

BACKGROUND:

On April 20, 2017, Staff issued a Request for Proposals/Qualifications (RFPQ), in order to select a consultant to provide a third-party review of environmental documents and studies for proposed development projects at Mount San Antonio Community College (Mt. SAC). For public reference, the RFPQ and submitted proposals are on file in the Office of the City Clerk.

On June 5, 2017, ECORP Consulting, Inc. ("ECORP") was selected for the interim period, in response to the Notice of Completion (NOC) for the Mt. SAC Physical Education Project ("PEP") Draft Subsequent Environmental Impact Report (SEIR).

On June 14, 2017, the City Council approved a \$30,000 appropriation from the General Fund reserve authorizing ECORP to assist the City with providing comments in response to the PEP Draft SEIR to ensure all potential impacts and mitigation measures were adequately addressed.

STAFF ANALYSIS:

Currently, Mt. SAC continues to pursue approvals for PEP and West Parcel Solar Project ("WPSP"). On June 16, 2017, Mt. SAC issued a Notice of Preparation (NOP) of a Tiered Draft EIR for the WPSP. Additionally, on June 28, 2017, the Mt. SAC Board of Trustees took action to set aside approvals for the WPSP and the Addendum to the 2012 Master Plan EIR, pursuant to the March 14, 2017, Court Order. It is anticipated that EIRs for both the PEP and WPSP will be circulated by Mt. SAC within the calendar year.

Per the direction of the City Council, Staff continues to monitor and analyze Mt. SAC development projects. However, due to the size and scope of the projects, and on-going litigation for both the PEP and WPSP, a third-party consultant (ECORP) is recommended to assist Staff and City Attorney's Office with providing adequate and thorough review of the environmental and geotechnical documents circulated by Mt. SAC on behalf of the City.

ECORP has expertise and core disciplines in CEQA and National Environmental Quality Act (NEPA) documentation, regulatory permitting, biological resources, cultural resources, water resources, mitigation planning, geographic information systems, and experience with both solar alternative energy projects and community college master plan environmental documentation. ECORP has included on their team two (2) specialty subconsultants, Group Delta and Kunzman Associates, with whom they regularly work to assist with review of the geologic/geotechnical, air quality, greenhouse gas, noise, traffic studies, planning documents, and to offer additional specialty services as needed.

It should also be noted that the Agreement between the City and ECORP is a time and materials based contract which stipulates a "*not to exceed*" amount that requires City Council authorization. The approval of the attached First Amendment does not automatically mean the monies allocated for the project will reach the maximum amount. City staff and the City Attorney will continue to work diligently and efficiently with ECORP to ensure the best use of public funds.

FISCAL IMPACT:

Should the City Council approve the First Amendment, it will require an additional appropriation of \$70,000 from the General Fund reserve. Any monies not used will go back to the General Fund at the close of the fiscal year.

RELATION TO MISSION STATEMENT:

We will exceed expectations by preparing Walnut for the future and enhance civic pride by ensuring the City is well maintained.

CC Report
July 26, 2017
First Amendment – ECORP Consulting, Inc.
Page 3 of 3

Attachment(s):

1. First Amendment
2. Original Agreement for Professional Services (executed June 5, 2017)

ATTACHMENT 1

**First Amendment to the Original Agreement for
Professional Services**

P.O. Box 682, Walnut, CA 91788-0682
21201 La Puente Road
Walnut, CA 91789-2018
Telephone (909) 595-7543
FAX (909) 595-6095
www.cityofwalnut.org



FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES

This First Amendment is entered into as of July 26, 2017 ("Effective Date"), by and between the City of Walnut ("City"), a California municipal corporation and ECORP Consulting, Inc., a California corporation ("Consultant").

RECITALS

A. The City and ECORP Consulting, Inc. ("ECORP") entered into that certain Agreement for Professional Services dated as of June 5, 2017 (the "Original Agreement").

B. On June 14, 2017, the City Council authorized payment for Consultant services in an amount to not exceed Thirty Thousand Dollars (\$30,000) until such time as the City Council authorized any additional amounts.

C. City and Consultant now desire to increase the payment amount of the Original Agreement to not exceed One Hundred Thousand Dollars (\$100,000), to perform the services described and set forth in the Consultant's proposal dated May 18, 2017.

D. Except as otherwise defined herein, all capitalized terms used herein shall have the meanings set forth for such terms in the Original Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, City and Consultant agree as follows:

1. PAYMENT Section 5(a), of the Original Agreement is hereby amended and restated in its entirety as follows:

"The City agrees to pay Consultant in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit C, provided, however that the City has authorized an amount that shall not exceed One Hundred Thousand Dollars (\$100,000) until such time as the City Council for the City authorized any additional amounts, which notification of such authorization shall be made in writing delivered to Consultant and the maximum authorization shall be stated therein".

2. Except for the changes specifically set forth herein, all other terms and conditions of the Original Agreement shall remain in full force and effect and are reaffirmed. If there is any conflict between this First Amendment and any provision of the Original Agreement, the provisions of this First Amendment shall control.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed on the respective dates set forth below.

City of Walnut

By: _____
Robert Wishner, City Manager

Date: _____

ECORP Consulting, Inc.

By: _____
Brant Brechbiel, Vice President/CCO

Date: _____

APPROVED AS TO FORM:

ATTEST:

By: _____
Barbara Leibold, City Attorney

By: _____
Teresa De Dios, City Clerk

ATTACHMENT 2

Original Agreement for Professional Services

(executed June 5, 2017)



AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is effective as of June 5, 2017, between the City of Walnut, a municipal corporation ("CITY") and ECORP Consulting, Inc., a California corporation ("CONSULTANT"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This AGREEMENT shall commence immediately upon execution by the parties and shall remain and continue in effect until the services and related work described herein are completed, in accordance with CONSULTANT's Proposal (Exhibit E), but in no event later than June 30, 2018 unless sooner terminated pursuant to the provisions of this AGREEMENT.

2. SERVICES

CONSULTANT shall perform the services described and set forth in Exhibit A. CONSULTANT shall perform such services and complete the tasks to be performed at the time, place, and in the manner specified in this AGREEMENT, subject to the direction of the CITY's City Attorney Barbara Leibold or other designated representative that CITY may provide from time to time. CONSULTANT shall complete the services according to the Schedule of Performance which is set forth in Exhibit B. Any change in the services to be provided or tasks to be performed shall be set forth in a written amendment approved by the City Manager and physically attached to this AGREEMENT.

The services as provided herein are for the purposes of aiding the Office of the City Attorney in matters involving pre-litigation and litigation in which the CITY is or may be a litigant. Accordingly, all correspondence, communications, reports and all other materials shall be transmitted or otherwise provided by CONSULTANT solely and exclusively to the Office of the City Attorney as follows:

Barbara Leibold, City Attorney
c/o Leibold McClendon & Mann
9841 Irvine Center Drive, Suite 230
Irvine, California 92618
barbara@ceqa.com
949-585-6300

3. PERFORMANCE

(a) Time is of the essence in the performance of this AGREEMENT. The time for completion of the services and related work to be performed by CONSULTANT is an essential condition of this AGREEMENT.

(b) CONSULTANT shall at all times faithfully, competently and to the best of his/her/its ability, experience, and talent, perform all services and related work contemplated pursuant to this AGREEMENT consistent with CONSULTANT's Proposal (Exhibit E). CONSULTANT shall employ, at a minimum, generally accepted industry standards and practices utilized by persons engaged in providing same or similar services as are required of CONSULTANT hereunder in meeting its obligations under this AGREEMENT and shall provide, furnish and pay all labor, materials, necessary tools, expendable equipment, and all taxes, utility and transportation services required to perform such the services and related work.

4. CITY MANAGEMENT

CITY's City Attorney Barbara Leibold shall be the CITY's designated representative in all matters pertaining to the administration of this AGREEMENT, review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the tasks to be performed or change the compensation due to CONSULTANT. City Manager shall be authorized to act on CITY's behalf and to execute all necessary documents to change the services to be provided or the tasks to be performed or change CONSULTANT's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The CITY agrees to pay CONSULTANT in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit C, provided, however, that CITY has initially authorized an amount that shall not exceed Thirty Thousand Dollars (\$30,000) until such time as the City Council for the CITY authorizes any additional amounts, which notification of such authorization shall be made in writing delivered to CONSULTANT and the maximum authorization shall be stated therein.

(b) CONSULTANT shall not be compensated for any non-contemplated services rendered in connection with its performance of this AGREEMENT unless such additional services are authorized in advance and in writing by CITY. CONSULTANT shall only be compensated for any additional services in the amounts and in the manner as agreed to by CITY and CONSULTANT.

(c) CONSULTANT will submit invoices for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month or as tasks are completed as specified in the CONSULTANT'S Proposal (Exhibit E). Notwithstanding any provision of CONSULTANT's Proposal (Exhibit E) to the contrary, out of pocket expenses shall be reimbursed at cost without an inflator or administrative charge. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the CITY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within ten (10) days of receipt of an invoice of any disputed fees set forth on the invoice. Payment by CITY under this AGREEMENT shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment.

(d) CONSULTANT agrees to notify CITY of business status change and agrees to submit a new W-9 form within (3) business days. CONSULTANT also agrees to notify CITY

representative, as per Section 13 of this AGREEMENT, of changes to contact and billing address or phone number.

6. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The CITY may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT, or any portion hereof, by serving upon the CONSULTANT at least ten (10) days prior written notice. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this AGREEMENT, unless the notice provides otherwise.

(b) In the event this AGREEMENT is terminated pursuant to this Section, the CITY shall pay to CONSULTANT the actual value of the agreed work performed up to the time of termination. Upon termination of the AGREEMENT pursuant to this Section, the CONSULTANT will submit an invoice to the CITY pursuant to Section 5.

7. OWNERSHIP OF DOCUMENTS

(a) CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by CITY that relate to the performance of services under this AGREEMENT. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of CITY or its designees at reasonable times to such books and records; shall give CITY the right to examine and audit said books and records; shall permit CITY to make transcripts there from as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this AGREEMENT. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this AGREEMENT, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this AGREEMENT shall become the sole property of the CITY and may be used, reused, or otherwise disposed of by the CITY without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the CITY, at the CONSULTANT's office and upon reasonable written request by the CITY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

(c) All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, and any written information either created by or provided to CONSULTANT in connection with the performance of this AGREEMENT shall be held confidential by CONSULTANT. Such materials shall not, without the prior written consent of CITY, be used by CONSULTANT for any purposes other than the performance of the services under this AGREEMENT. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this AGREEMENT. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is generally known, or has become known, to the related industry shall be deemed confidential.

CONSULTANT shall not use CITY's name or insignia, photographs relating to project for which CONSULTANT's services are rendered, or any publicity pertaining to the CONSULTANT's services under this AGREEMENT in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.

(d) CITY shall have sole determination of the public's rights to documents under the Public Records Act, and any third-party requests of CONSULTANT shall be immediately referred to CITY, without any other actions by CONSULTANT.

8. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for CONSULTANT's services, to the fullest extent permitted by law, CONSULTANT shall indemnify, protect, defend and hold harmless CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or sub-consultants (or any entity or individual that CONSULTANT shall bear the legal liability thereof) in the performance of professional services under this AGREEMENT. With respect to the design of public improvements, the CONSULTANT shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit D without the written consent of the CONSULTANT. CONSULTANT shall not be liable to any third parties for any liability exempted by statute.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this AGREEMENT by CONSULTANT or by any individual or entity for which CONSULTANT is legally liable, including but not limited to officers, agents, employees or sub-consultants of CONSULTANT. CONSULTANT shall not be liable to third parties for any liability exempted by statute.

(c) General Indemnification Provisions. CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-consultant or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this AGREEMENT. In the event CONSULTANT fails to obtain such indemnity obligations from others as required here, CONSULTANT agrees to be fully responsible according to the terms of this section. Failure of CITY to monitor compliance with these requirements imposes no additional obligations on CITY and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend CITY as set forth here is binding on the successors, assigns or heirs of CONSULTANT and shall survive the termination of this AGREEMENT or this section.

9. INSURANCE

CONSULTANT shall maintain, prior to the beginning of and for the duration of this AGREEMENT, insurance coverage as specified in Exhibit F attached hereto and incorporated as part of this AGREEMENT. By executing this AGREEMENT, CONSULTANT confirms that he/she/it has reviewed and approved the requirements of Exhibit F.

10. INDEPENDENT CONTRACTOR

(a) CONSULTANT is and shall at all times remain as to the CITY a wholly independent contractor. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the CITY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatsoever against CITY, or bind CITY in any manner.

(b) No employee benefits shall be available to CONSULTANT or any of its employees, agents, and subcontractors providing services in connection with the performance of this AGREEMENT. Except for the fees paid to CONSULTANT as provided in the AGREEMENT, CITY shall not pay salaries, wages, or other compensation benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits. CITY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

(c) In the event that CONSULTANT or any employee, agent, or subcontractor of CONSULTANT providing services under this AGREEMENT claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONSULTANT shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

11. INTERESTS OF CONSULTANT

CONSULTANT (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this AGREEMENT or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of CONSULTANT's services hereunder. CONSULTANT further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this AGREEMENT.

CONSULTANT is not a designated employee within the meaning of the Political Reform Act because CONSULTANT:

(a) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the CITY or of any City official, other than normal agreement monitoring; and

(b) possesses no authority with respect to any CITY decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

12. LEGAL RESPONSIBILITIES

The CONSULTANT shall keep informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this AGREEMENT. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The CITY, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

13. NOTICES

Any notices which either party may desire to give to the other party under this AGREEMENT must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To CITY: City of Walnut
 Attention: City Clerk
 21201 La Puente Road
 P.O. Box 682
 Walnut, CA 91789

To CONSULTANT: ECORP Consulting, Inc.
 Attention: Brant A. Brechbiel
 1810 Park Court Place, Bldg. B, Suite 103
 Santa Ana, CA 92701

14. ASSIGNMENT

The CONSULTANT shall not assign the performance of this AGREEMENT, nor any part thereof, nor any monies due hereunder, without prior written consent of the CITY. Because of the personal nature of the services to be rendered pursuant to this AGREEMENT, only CONSULTANT shall perform the services described in this AGREEMENT.

15. LICENSES

At all times during the term of this AGREEMENT, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the services described in this AGREEMENT.

16. GOVERNING LAW

The CITY and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this AGREEMENT and also govern the interpretation of this AGREEMENT. Any litigation concerning this AGREEMENT shall take place in the superior or federal district court with jurisdiction over the CITY.

17. MEDIATION

The parties agree to make a good faith attempt to resolve any disputes arising out of this AGREEMENT through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and share the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

18. LITIGATION EXPENSES AND ATTORNEYS' FEES

If either party to this AGREEMENT commences any legal action against the other party arising out of this AGREEMENT, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

19. INCORPORATION OF EXHIBITS; CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

The parties agree that the Exhibits attached hereto are a part of this AGREEMENT and are hereby incorporated by reference herein as though set forth in full. CONSULTANT is bound by the contents of CITY's Request for Proposal, (Exhibit D), and the contents of the proposal submitted by the CONSULTANT'S Proposal, (Exhibit E) hereto. In the event of conflict, the requirements of CITY's Request for Proposals and this AGREEMENT shall take precedence over those contained in the CONSULTANT's proposals.

20. ENTIRE AGREEMENT

This AGREEMENT contains the entire understanding between the parties relating to the obligations of the parties described in this AGREEMENT. All prior or contemporaneous Agreements, understandings, representations, and statements, oral or written, are merged into this AGREEMENT and shall be of no further force or effect. Each party is entering into this AGREEMENT based solely upon the representations set forth herein and upon each party's own

independent investigation of any and all facts such party deems material. Any amendments to this AGREEMENT must be in a writing of equal dignity.

21. AMENDMENTS

This AGREEMENT may be modified or amended only by a written document executed by both CONSULTANT and CITY and approved as to form by the City Attorney.

22. SEVERABILITY

If any term or portion of this AGREEMENT is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this AGREEMENT shall continue in full force and effect.

23. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this AGREEMENT on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this AGREEMENT on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

This AGREEMENT may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. Facsimile and transmitted signatures indicating concurrence shall be binding as original signatures.

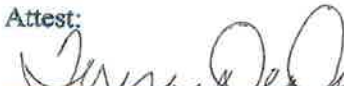
IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF WALNUT

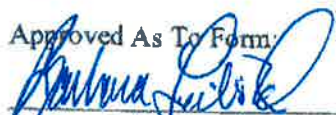

By: Rob Wishner, City Manager

Date: 6/5/17

Attest:


Teresa de Dios, City Clerk

Approved As To Form:


Barbara Leibold, City Attorney

ECORP Consulting, Inc. a
California corporation


By: Brant Brechbiel

Date: 6/5/17

Its: Vice President, CCO

EXHIBIT A

SERVICES TO BE PERFORMED

REFER TO EXHIBIT E - PROPOSAL DATED MAY 18, 2017

Specific tasks under the initial City authorization will be performed on a time and materials not-to-exceed basis. Initial tasks are expected include to include:

- Task 1 – Peer Review of Technical Studies (Phase 1B PEP)
- Task 3 – Review of Draft Subsequent Project EIR -- PEP (Phase 3B PEP)
- Task 5 – Meetings (up to 8 hours of senior staff time @ \$200)

EXHIBIT B

SCHEDULE OF PERFORMANCE

REFER TO EXHIBIT E - PROPOSAL DATED MAY 18, 2017

EXHIBIT C

PAYMENT SCHEDULE

REFER TO EXHIBIT E - PROPOSAL DATED MAY 18, 2017

EXHIBIT D

REQUEST FOR PROPOSAL

REFER TO ATTACHED PROPOSAL DATED MAY 18, 2017

EXHIBIT E

PROPOSAL SUBMITTED BY CONSULTANT

REFER TO EXHIBIT E - PROPOSAL DATED MAY 18, 2017

EXHIBIT F

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of Work, CONSULTANT will maintain insurance in conformance with the requirements set forth below. CONSULTANT acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CITY in excess of the limits and coverage required in this AGREEMENT and which is applicable to a given loss, will be available to CITY.

[Note: Minimum limit for each coverage may be verified with Risk Manager]

Insurance Requirements. Without limiting CONSULTANT's indemnification of CITY, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described below and in a form satisfactory to CITY. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' rating of A or higher and Financial Size Category Class VII or higher in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the CITY's Risk Manager. CONSULTANT shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - a. General Liability: Insurance Services Office form CG 00 01.
 - b. Automobile Liability: Insurance Services Office form number CA 00 01 covering bodily injury and property damage for all activities of the CONSULTANT arising out of or in connection with Work to be performed under this AGREEMENT, including coverage for any owned, hired, non-owned or rented vehicles.
 - c. Professional Liability: Errors and omissions liability insurance appropriate to the CONSULTANT's Services to be performed in connection with this AGREEMENT.
 - d. Workers' Compensation: Insurance as required by Section 3700 of the Labor Code of State of California, and Employer's Liability Insurance covering all persons providing services on behalf of the CONSULTANT and all risks to such persons under this AGREEMENT.
2. Minimum Limits of Insurance. CONSULTANT shall maintain limits of insurance no less than:

- a. General Liability: \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
 - b. Automobile Liability: \$1,000,000 combined single limit for each accident.
 - c. Professional Liability (Errors & Omissions): \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date or retroactive date must be before the effective date of this AGREEMENT and CONSULTANT agrees to maintain continuous coverage through a period of no less than three years after completion of the services required by this AGREEMENT.
 - d. Workers' Compensation and Employer's Liability: Statutory Limits for Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 policy limit.
3. Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:
- a. All Policies.
 - i. Proof of Insurance. CONSULTANT shall provide certificates of insurance to CITY as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by CITY's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with CITY at all times during the term of AGREEMENT. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.
 - ii. Duration of Coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, his agents, representatives, employees or sub-consultants.
 - iii. CITY's Rights of Enforcement. In the event any policy of insurance required under this AGREEMENT does not comply with these specifications or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, CITY may cancel this AGREEMENT.

- iv. Enforcement of Agreement Provisions (non estoppel). CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the CITY nor does it waive any rights hereunder.
- v. Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, waiver of any coverage normally provided by insurance or to fulfill the indemnification provisions and requirements of this AGREEMENT. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
- vi. Notice of cancellation. Each insurance policy required by this Exhibit "F" shall be endorsed and state the coverage shall not be cancelled by the insurance agent, broker, or either party to this AGREEMENT. CONSULTANT agrees to provide CITY with a thirty (30) day notice of cancellation or nonrenewal of coverage for each required coverage.
- vii. Agency's right to revise requirements. The CITY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the CITY and CONSULTANT may renegotiate CONSULTANT's compensation.
- viii. Self-insured retentions. Any deductibles or self-insured retention must be declared to and approved by CITY. CITY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by CITY.
- ix. Timely notice of claims. CONSULTANT shall give CITY prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.
- x. Additional insurance. CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of work.

- b. General Liability and Excess Liability Coverage.
 - i. Additional insured status. Policies shall provide or be endorsed to provide that CITY and its officers, officials, employees, and agents shall be additional insureds under such policies.
- c. Workers' Compensation and Employer's Liability Coverage.
 - i. Waiver of subrogation. All insurance coverage maintained or procured pursuant to this AGREEMENT shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against CITY, and shall require similar written express waivers and insurance clauses from each of its sub-consultants.