



## Agenda Report

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**File #:** 19-0087

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### **AGENDA REPORT REQUEST FOR CITY COUNCIL ACTION**

**DATE:** 2/6/2019

**TO:** Honorable Mayor and City Council Members

**FROM:** McKinley Grade Separation Peer Review Ad Hoc Committee

**SUBJECT:**

City Council consideration of Letter Agreement with JMDiaz, Inc. to provide Professional and Independent Peer Review Engineering Services as a member of the City's McKinley Grade Separation Peer Review Team.

**RECOMMENDED ACTION:**

That the City Council:

1. Consider and approve the attached Letter Agreement for up to \$10,000 with JMDiaz Inc. to provide professional and independent peer review engineering services as a member of the City's McKinley Grade Separation Peer Review Team, authorize and direct the City Manager to execute the Letter Agreement, and authorize the Purchasing Manager to issue a purchase order to JMDiaz, Inc., in the amount of \$10,000.
2. Upon the recommendation of the City Council's McKinley Grade Separation Peer Review Ad Hoc Committee, authorize and direct the City Manager to approve amendments to the Letter Agreement for up to \$5,000 (agreement total of \$15,000) based upon the reasoning further discussed in the "Delegated Authority for Amendments" section of this Agenda Report and authorize the Purchasing Manager to amend the purchase order accordingly.

**ANALYSIS:**

Background

On January 16, 2019, at the request of Council Member Speake, the City Council consented to the creation of the McKinley Grade Separation Peer Review Ad Hoc Committee ("Ad Hoc Committee"), a temporary advisory council committee consisting of Council Member Jacque Casillas and Council Member Wes Speake. Council Member Speake's purpose for the Ad Hoc Committee is to establish

a McKinley Grade Separation Peer Review Team (“Peer Review Team”) whose overall goal will be to take an independent look at the proposed McKinley Grade Separation Project. In particular, to take a look at the “Rail Over Road” alternative and its financial, technical and schedule feasibility, as well as the options thus far studied by staff and its consultant for the “Road Over Rail” alternative to determine whether a reasonable range of feasible alternatives has been studied.

Letter Agreement with JMDiaz, Inc.

As was discussed on January 16, 2019, Council Member Speake stated that one of the potential members of the Peer Review Team had wanted to be compensated for his time. The City Council indicated its comfort with staff spending up to \$15,000 on an agreement with the team member, but also acknowledged the possibility that the agreement would need to be returned to the City Council for approval if the City Manager did not wish to exercise his authority to approve the agreement.

The attached Letter Agreement is the proposed agreement with JMDiaz, Inc. to provide the professional and independent peer review engineering services of Juan M. Diaz as a member of the Peer Review Team. The Letter Agreement is a standard short-form professional services agreement drafted and approved as to form by the City Attorney. The Letter Agreement is capped at \$10,000, as the intent of the Ad Hoc Committee is to keep the work required to less than that amount. Although Mr. Diaz provided a “fee proposal” which was a little over \$10,000, it is not attached as a part of the Letter Agreement, since the first task of the Ad Hoc Committee will be to determine the exact scope and amount of work to be conducted by the Peer Review Team.

Because time is of the essence with this issue, it is notable that Mr. Diaz has indicated a willingness to meet with the Ad Hoc Committee and participate in the Peer Review Team in advance of the City Council’s consideration of the Letter Agreement. Thus, you will note that the Letter Agreement is retroactive to January 29, 2019.

Delegated Authority for Amendments

As stated, the intent of the Ad Hoc Committee is to keep the work required of the Peer Review Team to an amount that will require an expenditure of less than \$10,000 under this Letter Agreement. However, in the interests of time, the Ad Hoc Committee is requesting that the City Council also authorize and direct the City Manager to approve amendments to the Letter Agreement for up to \$5,000 (agreement total of \$15,000) upon the recommendation of the Ad Hoc Committee.

Although the Corona Municipal Code authorizes professional services agreements to be approved up to \$45,000 without competitive bidding, Administrative Policy 01300.001 (Purchasing Policy & Procedures Manual) sets a lower threshold for staff. From \$0 to \$5,000, competitive bidding is used at the discretion of the department entering into the agreement and from \$5,001 to \$10,000, competitive bidding is used at the discretion of the purchasing agent. From \$10,001 to \$45,000, staff is generally required to solicit written or oral proposals from at least three (3) vendors, unless an exception to competitive bidding is utilized. For professional services, one such exception to competitive bidding is established when it is determined that it is in the best interests of the City and its administrative operations to dispense with competitive bidding (Corona Municipal Code Section 3.08.140(E); AP 01300.001 Exception (E) page 21).

In this instance, to the extent that an exception to bidding would be deemed necessary if the Letter Agreement was being approved by staff, the Ad Hoc Committee is requesting that the City Council

determine that it is in the best interests of the City and its administrative operations to dispense with competitive bidding for this Letter Agreement and any amendments. This is a unique, time-sensitive situation and the Ad Hoc Committee requires the ability to select members for the Peer Review Team that it determines will best serve the interests of the City. For purposes of Administrative Policy 01300.001, staff shall treat this Agenda Report and the City Council's direction as describing in detail the reason for the exception to competitive bidding and staff shall implement the agreement and any required purchase order accordingly.

#### Peer Review Team - Members and Scope

In addition to Mr. Juan M. Diaz, the Ad Hoc Committee has selected another professional civil engineer with approximately forty (40) years of experience. He has worked both in-house and in the private sector on behalf of cities, including on public works and other transportation related projects. He is willing to volunteer his time to the Peer Review Team.

The Ad Hoc Committee is working with the City Attorney's Office to craft the Work Plan for the Peer Review Team. It is important that the work process of the Ad Hoc Committee and the Peer Review Team is unbiased, neutral and private. The goal is for the Peer Review Team to prepare a memorandum of its finding and recommendations which will ultimately be presented to the City Council in open session.

#### **COMMITTEE ACTION:**

This item is recommended for approval by the McKinley Grade Separation Peer Review Ad Hoc Committee (CM Casillas and CM Speake).

#### **STRATEGIC PLAN:**

Not applicable.

#### **FISCAL IMPACT:**

The total possible compensation is \$15,000, and would be paid from the McKinley Grade Separation Capital Improvement Project (6937) in the Gas Tax Fund 222. As stipulated by Section 3.2.2 in the SB 132 Funding Agreement with Riverside County Transportation Commission, this cost is ineligible for SB 132 funding and shall be borne solely by the City without reimbursement.

#### **ENVIRONMENTAL ANALYSIS:**

This action is categorically exempt pursuant to Section 15061(b)(3) of the Guidelines for the California Environmental Quality Act (CEQA), which states that a project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This action merely approves a professional services agreement for peer review engineering services and will not result in any significant effect on the environment.

The proposed McKinley Grade Separation Project is also statutorily exempt from CEQA pursuant to Section 21080.13 of the California Public Resources Code, which states that CEQA does not apply to any railroad grade separation project that eliminates an existing grade crossing. If the City determines to carry out the proposed McKinley Grade Separation Project, it would eliminate the

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existing grade crossing at McKinley Street, south of Sampson Avenue. Therefore, no environmental analysis is required at this time.

**PREPARED BY:** DEAN DERLETH, CITY ATTORNEY/LRM DIRECTOR

**REVIEWED BY:** NELSON D. NELSON, PUBLIC WORKS DIRECTOR

**REVIEWED BY:** KERRY D. EDEN, ASSISTANT CITY MANAGER/ADMINISTRATIVE SERVICES DIRECTOR

**REVIEWED BY:** MICHELE NISSEN, ASSISTANT CITY MANAGER

**SUBMITTED BY:** DEAN DERLETH, CITY ATTORNEY/LRM DIRECTOR

Attachments: Letter Agreement with JMDiaz, Inc.