



Agenda Report

File #: 19-0087

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

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.



OFFICE OF: City Manager

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City Hall Online All The Time – <http://www.coronaca.gov>

February 6, 2019

Juan M. Diaz, MBA, PE
JMDiaz, Inc.
18645 East Gale Avenue, Suite 212
City of Industry, CA 91748

Re: Letter Agreement for McKinley Grade Separation Peer Review Team

Dear Mr. Diaz:

PARTIES: This letter shall be our agreement ("Letter Agreement") regarding the professional and independent peer review engineering services described below ("Services") to be provided by JMDiaz Inc., a California Corporation ("Contractor") as an independent contractor to the City of Corona ("City") for the City's McKinley Grade Separation Peer Review Team ("Project"). Contractor is retained as an independent contractor and is not an employee of the City.

SERVICES; SCHEDULE OF PERFORMANCE: The Services to be provided include the following: as directed by the City Council's McKinley Grade Separation Peer Review Ad Hoc Committee ("Council Ad Hoc Committee"), provide professional and independent peer review engineering services as a member of the City's McKinley Grade Separation Peer Review Team. Services on the Project shall be retroactive to January [____], 2019 and be completed pursuant to the schedule reasonably established by the Council Ad Hoc Committee ("Term"), unless extended by the City in writing.

STANDARD OF CARE: Contractor shall perform all Services under this Letter Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California, and consistent with all applicable laws. Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the Term of this Letter Agreement.

SUBSTITUTION OF KEY PERSONNEL: Contractor has represented to City that certain key personnel will perform and coordinate the Services under this Letter Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Letter Agreement for cause. The key personnel for performance of this Letter Agreement are as follows: Juan M. Diaz.

COMPENSATION: Compensation for the above services shall be based on the actual amount of time spent in adequately performing the Services, and shall be billed at the hourly rate(s) of PIC/QA/QC MGR (\$230); SEN EGR (\$140); PROJ ENG (\$117); ANALYST/GRAPHICS (\$95); DES/CAD OPER (\$72); CLERK/INTERN (\$50). Authorized reimbursements shall be paid according to the following: mileage at the then current IRS Rate; actual cost of overnight mail or other delivery services reasonably authorized by the Council Ad Hoc Committee; and actual copying costs. The total compensation, including authorized

reimbursements, shall not exceed TEN THOUSAND DOLLARS (\$10,000) ("Total Compensation") without written approval of the City Manager. Contractor's invoice shall include a detailed description of the Services performed and reimbursements requested. Invoices shall be submitted to the City monthly as performance of the Services progresses. City shall review and pay the approved charges on such invoices in a timely manner.

PREVAILING WAGES: Contractor is aware of the requirements of Chapter 1 (beginning at Section 1720 et seq.) of Part 7 of Division 2 of the California Labor Code, as well as Title 8, Section 16000 et seq. of the California Code of Regulations ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the Total Compensation is \$1,000 or more, Contractor and its subcontractors shall fully comply with the Prevailing Wage Laws for their employees and any others to whom such laws are applicable. Consultant and its subconsultants shall also be responsible for any and all violations and fines imposed on them pursuant to the Prevailing Wage Laws. Pursuant to SB 854, which amended the Prevailing Wage Laws, this Letter Agreement would also be subject to compliance monitoring and enforcement by the California Department of Industrial Relations ("DIR"). Beginning April 1, 2015, no contractor or subcontractor may be awarded this Letter Agreement unless registered with the DIR pursuant to Labor Code Section 1725.5. The City will report all necessary agreements to the DIR as required by the Prevailing Wage Laws. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. It is most efficient for the Contractor to obtain a copy of the prevailing wages in effect at the commencement of this Letter Agreement from the website of the Division of Labor Statistics and Research of the DIR located at www.dir.ca.gov/dlsr/. In the alternative, Contractor may obtain a copy of the prevailing wages from the City's Public Works Director. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

INSURANCE: Contractor shall provide proof of commercial general liability and automobile insurance to the City in amounts and with policies, endorsements and conditions required by the City for the Services. If Contractor is an employer or otherwise hires one or more employees during the Term of this Letter Agreement, Contractor shall also provide proof of workers' compensation coverage for such employees which meets all requirements of state law. Contractor shall also provide errors and omissions professional liability insurance appropriate to its profession in an amount, with conditions and for a term acceptable to the City.

TERMINATION: The City may terminate this Letter Agreement at any time with or without cause. If the City finds it necessary to terminate this Letter Agreement without cause before Project completion, Contractor shall be entitled to be paid in full for those Services adequately completed prior to the notification of termination. Contractor may terminate this Letter Agreement only upon 30 calendar days' written notice to the City and only in the event of City's failure to perform in accordance with the terms of this Letter Agreement through no fault of Contractor.

INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall defend (with counsel of City's choosing), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of, pertaining to, or incident to any alleged willful misconduct or negligent acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Letter Agreement, including without limitation the payment of all settlement amounts, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the

above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor. Contractor's obligation to indemnify shall survive expiration or termination of this Letter Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

LAWS & REGULATIONS; EMPLOYEE/LABOR CERTIFICATIONS: Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, as well as emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD), the California Air Resources Board (CARB) or other governmental agencies. By executing this Letter Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Contractor shall maintain records of its compliance, including its verification of each employee, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work or Services relating to the Project or this Letter Agreement to make the same verifications and comply with all requirements and restrictions provided herein. Contractor's failure to comply or any material misrepresentations or omissions relating thereto shall be grounds for terminating this Letter Agreement for cause. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services. Finally, Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment in violation of state or federal law. As provided for in the indemnity obligations of this Letter Agreement, Contractor shall indemnify City against any alleged violations of this paragraph, including, but not limited to, any fines or penalties imposed by any governmental agency.

GOVERNING LAW; VENUE; GOVERNMENT CODE CLAIM COMPLIANCE ATTORNEY'S FEES: This Letter Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Letter Agreement, the action shall be brought in a state or federal court situated in Riverside County, State of California. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code Sections 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Letter Agreement, the prevailing party shall be entitled to recover all reasonable fees and costs incurred, including reasonable attorney's fees, as determined by the court.

ASSIGNMENT; AMENDMENT: Contractor shall not assign, sublet, or transfer this Letter Agreement or any rights under or interest in this Letter Agreement without the written consent of the City, which may be withheld for any reason. This Letter Agreement may not be modified or altered except in writing signed by both parties. There are no intended third party beneficiaries of any right or obligation of the Parties.

ENTIRE AGREEMENT; CONSTRUCTION & CAPTIONS: This is an integrated Letter Agreement representing the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. Since the Parties or their agents have participated fully in the preparation of this Letter Agreement, the language of this Letter Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Letter Agreement.

If you agree with the terms of this Letter Agreement, please sign and date where indicated below, and return one fully executed copy to the City. An original, executed copy is enclosed for your records.

CITY OF CORONA

Approved by:

Darrell Talbert
City Manager

Attest:

Sylvia Edwards
City Clerk

Approved as to Form:

Dean Derleth
City Attorney

CONTRACTOR

Reviewed and Accepted by Contractor



Signature

JUAN M. DIAZ

Name

PRESIDENT/CEO

Title

1/23/19

Date



Signature

JUAN M. DIAZ

Name

CHIEF FINANCIAL OFFICER

Title

1/23/19

Date