



COUNCIL AGENDA: 6/12/07
ITEM: 2.3

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: William F. Sherry, A.A.E.

SUBJECT: See Below

DATE: 5/21/07

Approved

Date

5/24/07

COUNCIL DISTRICT: City-Wide

SUBJECT: SIXTH AMENDMENT TO CONSULTANT AGREEMENT WITH DAVID J. POWERS & ASSOCIATES, INC. FOR AIRPORT ENVIRONMENTAL ANALYSIS SERVICES

RECOMMENDATION

Approval of a Sixth Amendment to the Consultant Agreement with David J. Powers & Associates, Inc. for Airport environmental analysis services, increasing the maximum cost of the Agreement by \$250,000 (from \$620,000 to \$870,000) and extending the term from July 1, 2007 to June 30, 2008.

OUTCOME

Approval of the proposed Sixth Amendment will provide continuity of ongoing, as-needed Airport environmental analysis services, including sufficient funding and time to continue the Airport Obstruction Study, and related follow-on technical services.

BACKGROUND

David J. Powers & Associates, Inc., provides critical technical assistance to the City on Airport environmental issues on an ongoing basis, including preparation of environmental analyses related to the implementation and update of the Airport Master Plan and associated mitigation requirements, general and on-call guidance on compliance with the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) under a Consultant Agreement originally approved in 2003.

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Beginning with the Third Amendment approved by Council on January 10, 2006, the Agreement has also funded the time-critical Airport Obstruction Study effort to identify potential maximum building heights in the Airport vicinity, particularly in downtown San Jose, based on existing high-rise buildings, Federal Aviation Administration (FAA) imaginary surface standards, and airline operational procedures for clearing obstructions in emergency reduced-power situations.

As the Airport Obstruction Study has progressed, the scope of work has expanded, and the associated cost of consultant services has increased, due to the technical complexity of the analysis, including the addition of a supplemental set of FAA obstruction criteria in the analysis of downtown airspace, assistance in identifying and resolving data problems associated with existing building elevations/locations, additional consultation with airlines to ensure correct understanding and depiction of each individual airline's engine-out emergency procedures, preparation of numerous site-specific analyses for potential high-rise project proposals, preliminary assessment of airline operational restrictions and economic implications of potential high-rise development scenarios, and number and frequency of meetings with City staff.

The analysis of the downtown study area was tentatively completed last fall. Council deferred action to allow downtown stakeholders time to complete their own assessment of the staff recommendations. That effort is currently ongoing. The pending staff recommendations are anticipated to return to Council for consideration in fall of 2007.

ANALYSIS

The proposed Amendment provides for the continuation of necessary Airport environmental consulting services, including the completion of remaining Airport Obstruction Study tasks and related follow-on services.

The Airport Obstruction Study status report contained in an Information Memorandum distributed to Council on February 22, 2007, anticipated the need to amend the Consultant Agreement to provide additional funds and time to complete the scope of work which, in addition to the downtown technical analysis, includes identification of maximum building heights in the rest of the Airport vicinity (outside of downtown), training for City staff on technical airspace issues and utilization of the database product incorporating all the obstruction surfaces, coordination with the FAA on updating the federal databases (determined by the study to be seriously deficient), and review and update of the Airport's technical airspace drawings required by the FAA. Staff anticipated completion of these remaining tasks within a few months of Council action on the downtown findings/recommendations this fall. While the current Consultant Agreement, as amended, is intended to continue through the completion of the Airport Obstruction Study, staff will conduct a new RFQ process for as-needed environmental consultant services during FY 2007-08.

San Jose Municipal Code Section 4.12.210 requires that the City engage in a competitive procurement on all professional services contracts with a payment amount exceeding \$10,000. For professional services contracts where price is not the determinative factor, proposers that

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qualify as local business enterprises are to be given a credit equal to five percent of the total points used to determine the most advantageous proposal to the City. Local business enterprises that also qualify as small business enterprises are to be given an additional credit equal to five percent of the total points used to determine the most advantageous proposal to the City.

Unless Council determines that it is not practicable for the City to engage in a competitive procurement, the Municipal Code requirements apply to consultant agreement amendments such as the proposed Sixth Amendment to increase the maximum compensation and extend the term. Council may determine that it is not practical to engage in a competitive procurement upon a determination that an unusual or unique situation exists that makes the application of the requirements for competitive procurement of the consultant agreement amendment contrary to the public interest. Staff recommends that Council determine that it is not practicable to engage in a competitive procurement for the additional consultant services included in the proposed Sixth Amendment, because a continuation of the Consultant's services is critical to accomplishing the expert and often time-critical environmental analyses referenced above. The Consultant's experience and knowledge regarding the Airport is therefore sufficient basis for a determination that a unique situation exists that would make the application of the requirements for competitive procurement of the consultant agreement amendment contrary to the public interest.

POLICY ALTERNATIVES

Alternative: Direct City staff to conduct a competitive procurement for an environmental consultant to the Airport.

Pros: Advantages realized through competitive process.

Cons: Potential diminished value of contract, due to required learning curve for new consultants, and disruption of critical services, most especially the ongoing Airport Obstruction Study.

Reason for not recommending: David J. Powers & Associates, Inc. has developed a high degree of familiarity with the specific environmental issues impacting the Airport, and has performed its duties with competence and timeliness. It is in the City's best interests to maintain their services, especially in consideration of the ongoing Airport Obstruction Study.

PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council

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or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The above criteria do not apply to the proposed Amendment.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

The consultant services covered under this Agreement support the ongoing operation and development of the Airport, consistent with the goals and policies of the City General Plan and Airport Master Plan. This project is also consistent with the Guiding Principles for Budget and Financial Management (Document: Mayor's 2006-2007 Revised June Budget Message, p.9) to "Preserve our options for the future as much as possible".

COST SUMMARY/IMPLICATIONS

- | | | |
|----|-----------------------------------|----------------|
| 1. | AMOUNT OF RECOMMENDATION: | \$250,000 |
| | Original Agreement | \$100,000 |
| | First Amendment (time extension) | -- |
| | Second Amendment (time extension) | -- |
| | Third Amendment | 150,000 |
| | Fourth Amendment | 120,000 |
| | Fifth Amendment | 250,000 |
| | Sixth Amendment | <u>250,000</u> |
| | TOTAL | \$870,000 |
2. COST ELEMENTS OF AGREEMENT:
Professional Services \$250,000
3. SOURCE OF FUNDING: 527 – Airport Renewal and Replacement Fund
4. FISCAL IMPACT: The amended agreement will have no adverse impact on the General Fund operating budget.

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BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	Total Appn. 2006-2007	Amt. for Contract	2006-2007 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
527	4007	Advanced Planning	\$959,000	\$250,000	V-992	2-13-07, 27973

CEQA

Resolution Nos. 67380 and 71451, PP 07-089

for 
WILLIAM F. SHERRY, A.A.E.
Director of Aviation
Airport Department

Please direct questions to William Sherry, Director of Aviation, 501-7669.

WFS:CG