



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: November 5, 2013

Agenda Item 6I

Approvals:

City Manager WEL

Dept. Head WEL

Attorney AB

Finance W

Department: Public Works / Engineering
Prepared By: Tom Bonigut, Assistant City Engineer

Subject: *APPROVE SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT FOR I-5/ AVENIDA VISTA HERMOSA RIGHT-OF-WAY CLOSEOUT.*

Fiscal Impact: No. There are RCFPP funds already appropriated for this expense.

Summary: Staff recommends approval of a second amendment of up to \$63,800 to an existing agreement with RBF Consulting to complete right-of-way documentation required by Caltrans for the close out of the Avenida Vista Hermosa Interchange project.

Background: In June 2012 the City Council approved a first amendment to an agreement with RBF Consulting to provide various services needed to complete easements, joint use agreements and right-of-way documentation required by Caltrans for the I-5/ Avenida Vista Hermosa interchange project. The first amendment of \$26,425 was needed to resume previous work that had been suspended several years earlier due to the SunCal bankruptcy. Caltrans has required additional work to properly complete the right-of-way transfer, therefore another amendment to RBF's existing agreement is required as discussed below.

Discussion: At a recent coordination meeting, Caltrans identified several additional related requirements that must be satisfied to ensure a proper transfer of right-of-way, including adjustment of certain retaining wall footing easements to be conveyed to Caltrans, title reports for parcels on the east side of the interchange that must also be conveyed to Caltrans, changes of certain Joint Use Agreements to other types of agreements, preparation of hazardous materials disclosure documents and further changes to the final right-of-way maps. The second amendment also includes two optional tasks that may be needed depending on the outcome of the additional Caltrans-directed work. These work items are not included in RBF's current scope of work therefore a second amendment of up to \$63,800 total to RBF's agreement is needed to complete the items required by Caltrans. This effort is funded from the RCFPP fund, and there is available funding in the project budget for this increased expense. If the two optional tasks are needed, the total contract amount (including original agreement and Amendments 1 and 2) will be about \$110,000. Based on the meeting with senior Caltrans staff as well as RBF and City staff, RBF developed an updated action plan which reflects what should be the final suite of work tasks required to complete this project.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor execute a Second Amendment to the Professional Services Agreement with RBF Consulting in the amount of \$63,800 to provide to right-of-way closeout services for the I-5/Avenida Vista Hermosa Interchange, City Project No. 12155.

Attachments: Proposed second agreement amendment.

Notification: None.

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ATTACHMENT 1

**Proposed Second Amendment to
Professional Services Agreement for Avenida Vista Hermosa
Right-of-Way Close Out**

**SECOND AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT FOR
I-5/AVENIDA VISTA HERMOSA RIGHT-OF-WAY CLOSEOUT**

This Second Amendment to Professional Services Agreement for I-5/Avenida Vista Hermosa Right-of-Way Closeout (this "Second Amendment") is made and entered into on this ____ day of _____, 2013, by and between the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), and RBF Consulting ("Contractor").

R E C I T A L S:

- A. City and Contractor entered into that certain Professional Services Agreement for I-5/Avenida Vista Hermosa Right-of-Way Closeout services (the "Original Agreement") on May 21, 2008.
- B. City and Contractor entered into that certain First Amendment to Professional Services Agreement for I-5/Avenida Vista Hermosa Right-of-Way Closeout services (the "First Amendment") on November 8, 2012. The Original Agreement, as modified by the First Amendment, is hereinafter referred to as the "Agreement."
- C. City and Contractor desire to further amend the Agreement in the manner provided herein.

C O V E N A N T S:

Section 1: Section 1.1 of the Agreement is hereby amended by replacing the original scope of services referenced in Exhibit A to the Agreement with those services described in Exhibit "A" to this Second Amendment, which exhibit is attached hereto and incorporated herein by this reference.

Section 2: Section 3.1 of the Agreement entitled "Payment Schedule: Maximum Payment Amount" is hereby amended by replacing the last sentence of this section with the following: "The total project fee for the scope of services set forth in Exhibit "A" shall not exceed One Hundred Ten Thousand Two Hundred Twenty Five Dollars (\$110,225.00), including all amounts payable to CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies and costs arising from or due to termination of this Agreement."

Section 3: Except as expressly amended by this Second Amendment, the remaining portions of the Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 2013

ATTEST:

CITY CLERK of the City of
San Clemente, California

Approved as to form:
RUTAN & TUCKER, LLP

City Attorney

("CONTRACTOR")

By: _____

Its: _____

Dated: _____, 2013

Finance Authorization

EXHIBIT "A"
SCOPE OF SERVICES
I-5/AVENIDA VISTA HERMOSA RIGHT-OF-WAY CLOSEOUT

EXHIBIT A
SCOPE OF SERVICES
I-5/Avenida Vista Hermosa Right of Way Conveyance Support
Contract Amendment No. 2

RBF Consulting will provide the following additional services on a time and material basis in accordance with the attached hourly rate schedule to be invoiced monthly. The work program is based strictly on the scope of services identified herein and as outlined from the current work plan defined as of October 7, 2013.

TASK DESCRIPTION

Task 1 – Provide Updated Legal Descriptions and Exhibits and Prepare Additional New Legal Descriptions and Exhibits

RBF will update all previously prepared legal descriptions and exhibits (total of 16) with new signature and dates for each parcel, JUA, CUA and quitclaim. Also, RBF will prepare additional revised legal descriptions and exhibits as follows:

- One (1) legal description and exhibit for City of San Clemente / Caltrans CUA 101916-1 on Avenida Vista Hermosa to include the stub out portion of the City waterline from the existing limits of the CUA to the westerly end of the proposed Caltrans R/W.
- One (1) legal description and exhibit for revised Parcel 101910-3. The Caltrans R/W line at the southerly end of the Parcel will be modified to avoid two additional CUAs for the existing AT&T phone line easement and sewer line easement.
- One (1) legal description and exhibit for revised CUA 101910-2 between the City of San Clemente and Caltrans. The Caltrans R/W line at the southerly end of the CUA will be modified to avoid two additional CUAs for the existing AT&T phone line easement and sewer line easement.
- One (1) legal description and exhibit for the AVH Partial Take Parcel 101916-1 to change the basis of bearing to match the Caltrans Right-of-Way Map. The previous legal description and exhibit used the basis of bearing for the Tract Map 8817. In order for a smooth review and submittal to Caltrans, the basis of bearing for the legal description and exhibit will be changed.
- In the 2005 Judgment and Final Order of Condemnation at Pacific Point Apartments, wall footing easement Parcels 101911-9 and 101911-2 were conveyed to the City of San Clemente for the purpose of wall footing easements for retaining walls # 14 and # 70 along the northbound on and off ramps. The Judgment included two footing easements that are larger than the required footing easements needing to be conveyed to Caltrans. RBF has researched the historical documentation of the footing easements for the retaining walls and will complete the following tasks to reflect the easements required to be conveyed to Caltrans:

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- Review Title Reports for Pacific Point Apartments to verify recorded easements.
- Prepare partial quitclaim legal description and exhibit for Parcels 101911-2 and 101911-9 for the City to quitclaim.
- Once recorded, review updated Title Report to ensure correct footing easements are defined for ultimate conveyance to Caltrans.

Task 2 – Order Title Reports and Review

RBF will order (1) preliminary title report for each affected parcel on the easterly side of the freeway to be conveyed to Caltrans for the following nine parcels: fee parcel 101912-1, fee parcel 101910-2, fee parcel 101911-10, fee parcel 101910-3, fee parcel 101910-1, fee parcel 101911-1, fee parcel 101909-1, easement parcel 101911-9, and easement parcel 101911-2. Once received, RBF will verify ownerships and legal descriptions for the underlying properties and send a copy to all involved parties. Initial title reports for the westerly side of the freeway were previously ordered and received with the cost from the Title Company being greater than originally budgeted. Recent updates were able to be obtained from the Title Company at no additional cost. Preliminary title reports will also now be obtained on the easterly side of the freeway for only the nine parcels to be conveyed to Caltrans. The cost of all preliminary title reports and any subsequent update required will be a direct reimbursable cost to the City.

Task 3 – Review and Update Previously Prepared Joint Use Agreements and Consent to Common Use Agreements and Prepare New Consent to Common Use Agreement

As discussed with Caltrans at the September 25, 2013 coordination meeting, they have requested that the previously prepared Joint Use Agreement (JUA) for the City of San Clemente relocated domestic water line be changed to a Consent to Common Use Agreement (CCUA). In addition, the City has requested that the short stub out of the new water line to the State R/W be added to the CCUA. All of the previously prepared CCUAs and JUAs on the project will continue to be reviewed and updated where required including coordinating reviews with Caltrans, the City, AT&T and SCWD. JUAs and CCUAs will not be prepared for the City of San Clemente new reclaimed water line, nor any other utility facility that was not relocated as part of the interchange project, but rather was a separately constructed new facility.

Task 4 – Additional Revisions for Final Right of Way Record Maps

Revisions to the final Right of Way Record Maps to reflect any changes and recordation information will be greater than originally anticipated based on the more defined work plan dated October 7, 2013 and as discussed with Caltrans on September 25, 2013.

Task 5 – Hazardous Materials Disclosure Documents

Caltrans will require preparation of a Hazardous Material Disclosure Document (HMDD) for each parcel that is to be conveyed from the City to the State. RBF will prepare the HMDD for each Caltrans parcel using the original Initial Site Assessment (ISA) dated January 25, 1999, as reference. Private property right of entry is not anticipated and is excluded from the work program. A Caltrans encroachment permit will be obtained for visual observations if required. An optional Task 10 for an updated ISA has been included in the event that Caltrans requires this document.

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Task 6 – Project Meetings

To facilitate final resolution of right of way project documentation between all parties, RBF will attend up to two (2) additional coordination meetings with the City, South Coast Water District, AT&T, and Caltrans with a maximum of 2 staff members.

Task 7 – Project Management/Coordination and Agreement/ Easement Processing

RBF will maintain and update the action plan for the various legal descriptions, exhibits, JUAs, CCUAs, and Right of Way Record Maps required for City conveyance of right of way to Caltrans and administer the project schedule and contract. RBF will provide additional coordination with the involved parties (City, SCWD, AT&T, and Caltrans) for the various tasks that each involved party must accomplish for recordation of exhibits, JUAs, CCUAs, and Right of Way Record Maps. This includes coordinating submittals, PD-26 submittal including colored Right-of-Way maps and reference materials, reviews and approvals by the agencies and facilitating coordination between the agencies that will be required to provide proper right of way documentation for the City to ultimately convey to Caltrans. Actual recordation of documents will be by the appropriate public agency. This task had been budgeted for 40 hours for the previous Contract Amendment No. 1 and has required a significantly greater level of effort than originally budgeted. An additional 80 hours has been budgeted with this Contract Amendment No. 2.

Optional Task 8 – Additional CCUAs for Existing Storm Drain and Telephone Easements

As discussed with Caltrans at the September 25, 2013 coordination meeting, Caltrans requested RBF research the need for 3 additional CCUAs within the proposed Caltrans Right-of-Way. RBF will research as-built plans and Preliminary Title Reports of each parcel 101912-1, 101910-2 and 101909-1 to determine if additional CCUAs are required. If required, RBF will perform the following tasks:

- Determine if existing storm drain easement within Parcel 101912-1 requires a CCUA. If it is determined that a CCUA is required, prepare one (1) legal description and exhibit for CCUA in Parcel 101912-1.
- Determine if existing storm drain easement within Parcel 101910-2 requires a CCUA. If it is determined that a CCUA is required, prepare one (1) legal description and exhibit for CCUA in Parcel 101910-2.
- Determine if existing AT&T utility easement within Parcel 101910-2 requires a CCUA or quitclaim documentation. If it is determined that a CCUA or quitclaim is required, prepare one (1) legal description and exhibit for quitclaim or CCUA for the existing AT&T utility easement.
- Determine if existing storm drain easement within Parcel 101909-1 requires a CCUA. If it is determined that a CCUA is required, prepare one (1) legal description and exhibit for CCUA in Parcel 101909-1.
- Coordinate preparation, review and submittals of the CCUA documentation with Caltrans, the City and the utility agency, as appropriate, for 3 CCUAs.

Optional Task 9 – Phase I Initial Site Assessment Update

RBF will prepare a Phase I Initial Site Assessment (ISA) Update for the I-5/Avenida Vista Hermosa Interchange. The Phase I ISA (dated January 25, 1999) will be updated in accordance with the American Society for Testing and Materials (ASTM) Standard Practice E 1527-05 and the California Department of Transportation's (Caltrans') Standard Environmental Reference (SER).

The objectives of the ISA are to: (1) evaluate the potential for hazardous materials on the site based upon readily discernible and/or documented present and historic on-site uses and uses immediately adjacent to the site, and (2) generally characterize the expected nature of hazardous materials that may be present as a result of such uses, within the limits imposed by the scope of the ISA. Materials that may constitute a hazardous waste include, but are not limited to petroleum products, pesticides, organic compounds, heavy metals, or other compounds injurious to human health and the environment.

The ISA Update is not intended to provide specific qualitative or quantitative information as to the actual presence of hazardous materials at the site, but is to merely identify the potential presence based on available information and provide preliminary conclusions relative to site conditions. This scope specifically excludes laboratory testing, field sampling, environmental lien searches and chain of title documents. The ISA Update will include the following components:

- RBF will perform a site visit, which will consist of a visual examination of the project site for visual evidence of potential environmental concerns, including existing or potential soil and groundwater contamination as evidenced by soil or pavement staining or discoloration; stressed vegetation; indications of waste dumping or burial; pits; ponds; or lagoons; containers of hazardous substances or petroleum products; electrical and hydraulic equipment that may contain PCBs, such as electrical transformers and hydraulic lifts; and underground and aboveground storage tanks. RBF will examine the physical characteristics of the property (i.e., apparent runoff directions, location of paved areas, etc.). It should be noted that the site visit specifically excludes any subsurface investigation including, but not limited to, sampling and/or laboratory analysis.
- A preliminary visual examination of immediately adjacent property conditions and their general nature will be conducted.
- Historical uses of the project site will be investigated by examining locally available aerial photographs (including historical aerial photos), historical topographic maps, and other available documentation for evidence of potential environmental concerns associated with prior land uses. This investigation will include available research from the January 25, 1999, investigation to current. This analysis will be provided in table format within the ISA report.
- Investigations will be conducted for only the property parcels that will be conveyed from the City to the State. This analysis will include an exhibit illustrating the proposed project, the existing roadway right-of-way, and the proposed roadway right-of-way. A table will also be provided that will summarize recognized environmental conditions (RECs), if any, per each parcel to be conveyed to the State.

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- RBF will interview knowledgeable persons (i.e., current property owners, operators, occupants, adjacent residents, as well as applicable public agencies, if available) to identify operations conducted on the project site and neighboring properties, if any. RBF will also identify the uses of all adjoining properties (i.e., those contiguous to the project site). If such operations are likely to affect the project site by contamination with hazardous substances or petroleum products, RBF will describe the risks presented to the project site within the ISA.
- RBF will use available information from the January 25, 1999, ISA regarding general geology and topography of the project site and local groundwater conditions.
- RBF will include a review of the commercial database summaries, provided by Environmental Data Resources, Inc. (EDR), regarding public agency records for the project site and surrounding area. The EDR radius search will include a one-mile radius from the project boundaries.
- An update review of property data for the project site, if available, will be conducted.
- RBF will complete the ISA Checklist, as required by Caltrans, for the project.

ASSUMPTIONS

1. The City will record all documents that require recordation with the County of Orange and will pay all recording fees. In addition, if Title Insurance is required by Caltrans, the City will be in charge of obtaining and paying for any and all costs associated with Title Insurance for all of the Parcels.
2. The City will provide copies of final recorded documents demonstrating proper legal conveyance and City ownership of all property rights that will be transferred to Caltrans to RBF, Caltrans, SCWD and AT&T as appropriate.
3. All Caltrans' Fee Parcels, Storm Drain Access Easement, and Footing Easements will not require legal descriptions and exhibits.
4. The City will be billed by RBF, as a direct reimbursable, for all costs from Chicago Title for the title reports noted herein.
5. No agency plan checks are anticipated for the updated Right of Way Record Maps. All agency fees that may be required will be paid for directly by the City.
6. Grant deeds for all property conveyance will be prepared and reviewed by the various agencies involved (City, SCWD, AT&T, etc.).
7. No field survey for existing right of way monument recovery, nor setting of permanent right of way monumentation, is included in this scope of work and will require an additional work authorization if it is determined that survey monumentation work is needed for any reason.

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8. All work will be completed on a time and material basis. If a greater level of work is required, the City will be notified in advance that any specific task budget will be exceeded and additional work authorization will be provided by the City.

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**EXHIBIT B
COMPENSATION**

**I-5/Avenida Vista Hermosa Right of Way Conveyance Support
Contract Amendment No. 2**

<u>TASK</u>	<u>FEE</u>
1. Provide Updated Legal Descriptions and Exhibits and Prepare Additional New Legal Descriptions and Exhibits	\$ 10,000
2. Order Preliminary Title Reports and Review	3,000
3. Review and Update Previously Prepared Joint Use Agreements and Consent to Common Use Agreements and Prepare New Consent to Common Use Agreement	2,000
4. Additional Revisions for Final Right of Way Record Maps	4,000
5. Hazardous Materials Disclosure Documents	4,000
6. Project Meetings	1,700
7. Project Management/Coordination and Agreement/Easement Processing	<u>13,600</u>
	SUBTOTAL \$ 38,300
	Expenses \$ 500
	Title Reports (Estimated Cost) <u>\$ 7,500</u>
	SUB TOTAL FEE \$46,300
 <u>OPTIONAL TASKS</u>	
8. Additional CCUAs for Existing Storm Drain and Telephone Easements	\$ 8,000
9. Updated Phase I Initial Site Assessment	<u>9,500</u>
	TOTAL FEE \$63,800 (with Optional Tasks)

Services will be provided on a time and material basis in accordance with the attached hourly rate schedule.

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