

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: July 16, 2010

CAO File No. 0220-01024-2688

Council File No. 10-0398

Council District: All

To: The Mayor
The Council

From: Miguel A. Santana, City Administrative Officer *MAS*

Reference: Community Development Department transmittal dated February 17, 2010; Received by the City Administrative Officer on March 10, 2010; Additional information received through July 15, 2010

Subject: **AGREEMENT BETWEEN THE COMMUNITY DEVELOPMENT DEPARTMENT AND THE HOUSING AUTHORITY OF THE CITY OF LOS ANGELES FOR SERVICES RELATED TO THE REVIEW OF ENVIRONMENTAL DOCUMENTS**

SUMMARY

The Community Development Department (CDD) requests authority to execute an Inter-Agency Agreement (Agreement) with the Housing Authority of the City of Los Angeles (HACLA) for CDD to prepare and process environmental documentation for HACLA projects, for an amount not to exceed \$90,000 annually. The proposed term of the Agreement is one year, retroactive from July 1, 2010 through June 30, 2011, with options to renew for two additional one-year terms. The services provided under this Agreement will be funded by HACLA with proceeds from Department of Housing and Urban Development (HUD), Capital Grant Fund, CA16P004-501-10.

HUD requires National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) clearances for grant funded projects. CDD is the certified officer for HUD in the City and is authorized to sign off on these environmental documents. We recommend approval for CDD to execute an Agreement with HACLA, subject to review and approval by the City Attorney as to form, to provide environmental documentation for HACLA projects pursuant to a categorical exemption under CEQA and or a categorical exclusion under NEPA. The Agreement is also subject to the availability of funds from HACLA. The City and HACLA attorneys have conducted a preliminary review of the Agreement. The Agreement is provided as an attachment to this report.

CDD states that services are limited to environmental documentation necessary for HUD clearance pursuant to a categorical exemption under CEQA and or a categorical exclusion under NEPA. CDD will notify HACLA if a project requires "special studies" (Phase I reports, lead base paint and asbestos surveys and Section 106 reviews) or other related environmental documents. HACLA will provide and pay for any required "special studies". The cost to HACLA for CDD to review each project is \$1,500.

Services to be Provided

HACLA issued a Request for Proposals (RFP) in January 2010 for a contractor to perform environmental review services. CDD was selected as the lowest bidder at \$1,500 per project, pursuant to this RFP.

The responsibilities of CDD and HACLA will include but are not limited to the following:

- CDD will prepare and process environmental documentation for projects that are funded by federal grants, as requested by HACLA, under NEPA, CEQA and other relevant federal, state and local environmental laws and regulations for approval by HUD. The projects may include those listed in the HACLA Federal Fiscal Year (FY) 2010 Comprehensive Grant Program (CGP), funded by the Community Development Block Grant (CDBG)-American Recovery and Reinvestment Act, Capital Fund Recovery Competitive Grant and future projects which may be included in FY 2011 and 2012 CGP.
- HACLA will identify the specific projects and determine which project components are to be included in the environmental documentation.
- HACLA will complete a written request for documentation including a completed environmental checklist (Checklist) for each project. The Checklist requires information on the name of the project, project description, funding amount and sources of funds, the type of environmental documentation requested and other contact and project information.
- HACLA will arrange for any site visits or field reviews as required by CDD.
- CDD will complete the services for each project within 15 business days from receipt of a complete request for documentation for each project and, if applicable, the receipt of any necessary "special studies" completed for such project. Additional time will be necessary for (i) any other agency or entity to approve and transmit any information requested by CDD, (ii) filing and posting of any documentation with the County of Los Angeles, (iii) the payment of any fees by HACLA to a third party, and (iv) the identification and resolution of other unforeseen issues. CDD will notify HACLA in writing of any delays and an estimated completion date.

CDD will perform these services using existing positions approved in the 2010-11 Adopted Budget. These positions include one Environmental Supervisor, one Environmental Specialist II and one Senior Clerk Typist. The additional responsibilities are not expected to impact other department projects.

CDD has provided these services for HACLA since 2007. CDD states that 20 projects were reviewed in 2009 and \$15,000 was billed and reimbursed by HACLA. HACLA will reimburse CDD for related expenses through the payment of invoices issued by CDD. The Agreement requires CDD to provide an invoice to HACLA within 30 days of the completion of the CDD review. HACLA is required to pay such invoice no later than 30 days after receipt. If the invoices to HACLA are not processed or the reimbursements are not received, staff costs will be paid by CDBG.

CDD estimates that a minimum of 25 projects will be processed in 2010-11 at an estimated total cost of \$35,700. Additional projects will be processed as required up to the maximum amount of \$90,000 annually. CDD anticipates that funding from this program will offset CDBG costs. The savings that are generated as a result of this program will be used by CDD to fund other CDD administrative costs. This report includes recommendations for CDD to report back to Council through the Financial Status Report on reimbursements from HACLA that pertain to this Agreement. The report backs will provide an ongoing status on the projected HACLA funding that reduce CDBG costs and provide funding for other CDD costs. The recommendations in this report are in compliance with City Financial Policies in that expenditures will be reimbursed by federal grant funds.

RECOMMENDATIONS

That the Council, subject to the approval of the Mayor:

1. Authorize the General Manager, Community Development Department (CDD), or designee, to execute an Inter-Agency Agreement with the Housing Authority of the City of Los Angeles (HACLA) in an amount not to exceed \$90,000 annually, for the period retroactive from July 1, 2010 through June 1, 2011, with options to renew for two additional one-year periods, subject to review and approval by the City Attorney as to form;
2. Authorize the General Manager of CDD, or designee, to expend funds in an amount not to exceed \$90,000 annually for environmental documentation services for HACLA to be reimbursed by HACLA (Department of Housing and Urban Development, Capital Grant Fund, CA16P004-501-10) upon proper demand from the General Manager, CDD, or designee;
3. Instruct the General Manager, CDD, or designee, to report back to Council on a bi-annual basis through the Financial Status Report on the reimbursements from HACLA; and,
4. Authorize the General Manager of CDD, or designee, to prepare other Controller instructions and/or make any technical adjustments that may be required and are consistent with the Mayor and Council action on this matter, subject to the approval of the City Administrative Officer, and authorize the Controller to implement these instructions.

FISCAL IMPACT STATEMENT

There is no General Fund impact. Funding in the amount of up to \$90,000 annually is provided through the Housing Authority of the City of Los Angeles (HACLA) federal grant funds to reimburse the City for staff costs and expenses related to environmental documentation services for HACLA projects. The recommendations in this report are in compliance with City Financial Policies in that expenditures will be reimbursed by federal grant funds.

MAS:BLT:02010200

Attachment

AGREEMENT NUMBER _____ OF CITY CONTRACTS
BETWEEN
THE CITY OF LOS ANGELES
AND
THE HOUSING AUTHORITY OF
THE CITY OF LOS ANGELES

THIS INTER-AGENCY AGREEMENT ("Agreement") is made and entered into by and between the City of Los Angeles ("City") acting by and through its Community Development Department ("CDD"), and the Housing Authority of the City of Los Angeles, a public body, corporate and politic ("HACLA").

WITNESSETH

WHEREAS, HACLA has a need for certain environmental documentation under federal, state and local laws in connection with certain construction projects which HACLA undertakes;

WHEREAS, CDD is experienced in preparing environmental documentation under federal, state and local laws for construction projects similar to those undertaken by HACLA;

WHEREAS, HACLA desires to hire CDD to prepare for HACLA certain environmental documentation under federal, state and local laws in connection with certain construction projects which HACLA undertakes, and CDD desires to provide such services to the Agency; and

WHEREAS, HACLA desires to hire CDD to prepare for HACLA certain environmental documentation under federal, state and local laws in connection with certain construction projects which HACLA undertakes, and CDD desires to provide such services to the Agency; and

WHEREAS, HACLA has agreed to pay and CDD has agreed to accept an amount not to exceed a maximum cumulative compensation amount for all Projects under this Agreement of no more than Ninety Thousand Dollars (\$90,000).

WHEREAS, on or about _____, the Los Angeles City Council approved of CDD entering into an agreement with HACLA for CDD to provide environmental documentation services HACLA as contemplated by this Agreement (Council File No. 10-0398);

NOW, THEREFORE, the City and HACLA agree as follows:

I.
INTRODUCTION

§101. Parties to the Agreement

The parties to this Agreement are:

- A. The City of Los Angeles, a municipal corporation, having its principal office at 200 North Spring Street, Los Angeles, California 90012.
- B. HACLA, known as the Housing Authority of the City of Los Angeles, a public body, corporate and politic, having its principal office at 2500 Wilshire Boulevard, Penthouse, Los Angeles, California 90057.

§102. Representatives of the Parties and Service of Notices

- A. The representatives of the respective parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

- 1. The representative of the City shall be, unless otherwise stated in the Agreement:

Mr. Richard L. Benbow, General Manager
Community Development Department
1200 West Seventh Street, Sixth Floor
Los Angeles, CA 90012

With copies at the same address to:

Mr. Rodney Sakai
Environmental Specialist

- 2. The representative of HACLA shall be:

Mr. Rudolf C. Montiel
Executive Director
Housing Authority of the City of Los Angeles
2500 Wilshire Boulevard, Penthouse
Los Angeles, CA 90057

With copies at the same address to:

Mr. Vath Kim
Administrative Analyst, Modernization Department

- B. Formal notices, demands and communications to be given by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.
- C. If the name of the person designated to receive the notices, demands or communications or the address of the person is changed, written notice shall be given, in accord with this section, within five working days of the change.

§103. Relationship of Parties

The relationship between CDD and the City, on the one hand, and HACLA, on the other hand, under this Agreement shall not be construed as a joint venture, equity venture, partnership, or any other relationship other than as set forth herein. The parties hereto agree that the performance of CDD's services hereunder shall be in the capacity of an independent contractor and that no employee of CDD and the City, on the one hand, and HACLA, on the other, has been, are, or shall be the employee of the other by virtue of this Agreement. None of the parties to this Agreement shall have the authority to act as an agent of the other or to bind the other to any obligation with regards to this Agreement.

II. TERM AND SERVICES TO BE PROVIDED

§201. Time of Performance

The term of this Agreement shall commence upon that date of execution of this Agreement by HACLA and the City as stated on the execution page hereof and terminate one year thereafter with two one-year extensions.

§202. Services to be Performed

- A. HACLA has previously submitted to CDD a list of projects (each a "Project" and collectively, the "Projects", such list of Projects attached hereto as Exhibit A) contemplated to be undertaken by HACLA, each of which requires certain environmental documentation necessary to obtain clearance for each such Project under the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA").
- B. For each Project for which HACLA desires CDD to prepare environmental documentation necessary for NEPA and CEQA clearance, HACLA shall provide to CDD a written request for documentation ("Request for Documentation") which shall include, but not be limited to, the following: (i) the name of the Project, (ii) a purchase order ("P.O.") number, (iii) a complete description of the Project (including maps and photographs of such Project site and all related ancillary documents), (iv) a completed environmental checklist in the form previously provided by CDD to HACLA, a proforma of which is attached hereto and incorporated by this reference as Exhibit A and (v) the type of environmental documentation requested. Along with such Request for Documentation for a Project, HACLA shall arrange for any site visits/field reviews of such Project as may be required by CDD.

- C. Upon receipt of the Request for Documentation and upon completion of any necessary site visits/field reviews for such Project by CDD, CDD shall prepare for and deliver to HACLA the appropriate environmental documentation necessary for approval and clearance of such Project under NEPA and CEQA, which shall include the preparation of NEPA and CEQA clearance letters (the "CDD Services"). Notwithstanding any provision to the contrary in this Agreement, HACLA hereby authorizes CDD to act for HACLA in all matters as may be necessary to complete the CDD Services. CDD shall, in its sole discretion, have the right to reject any Project and not provide CDD Services for such Project. If CDD fails to respond to a Request for Documentation for a Project within ten (10) working days from receipt of such Request for Documentation, the Project shall be deemed so rejected by CDD.
- D. CDD Services shall be defined as and limited to environmental documentation necessary for HUD clearance of a Project pursuant to a categorical exemption under CEQA and/or a categorical exclusion under NEPA. In no event shall CDD Services be deemed to include the preparation or completion of any "special studies" (Phase I reports, lead base paint and asbestos surveys and Section 106 reviews) or any related environmental documentation thereto that may be required for clearance of such Project under CEQA or NEPA above and beyond a categorical exemption and/or a categorical exclusion. Upon receipt by CDD of a Request for Documentation for a Project, CDD shall notify HACLA of whether such Project requires "special studies" for CEQA or NEPA clearance, and HACLA shall remain solely responsible for providing and paying for any such "special studies" as may be required for CEQA and NEPA clearance.
- E. For each Project, CDD shall complete the CDD Services within fifteen (15) business days from receipt of a complete Request for Documentation for such Project and, if applicable, the receipt of any necessary "special studies" completed for such Project (the "Completion Time"). The Completion Time shall be extended by any additional time necessary for (i) any other agency or entity to approve, gather, process and transmit any information requested by the CDD, (ii) the filing and posting, if requested by HACLA, of any documentation with the County of Los Angeles, (iii) the payment of any fees by HACLA to any third party with regards to a Project as requested by CDD, and (iv) the identification and resolution of any unforeseen issues not caused by any actions of CDD during the completion of the CDD Services, including any site visits to the Project. In the event CDD cannot complete the CDD Services by the Completion Time (including any extensions thereto), CDD shall notify HACLA in writing before the end of such Completion Time citing reasons for the delay and an estimated completion date.

III.

PAYMENT & ACCEPTANCE/CANCELLATION

§301. Compensation and Method of Payment

- A. For each Project CDD completes the CDD Services, HACLA shall pay to CDD as compensation, the sum of Fifteen Hundred Dollars (\$1,500.00) (the "Compensation") per Project. The parties agree that the maximum cumulative compensation amount for all Projects under this Agreement shall be no more than Ninety Thousand Dollars (\$90,000.00).
- B. The Compensation shall not include any fees to be paid to any party, other than CDD, in order to complete the CDD Services. Any and all fees due and owing to any party other

than CDD shall be paid separately to such party directly by HACLA. Any such fees are separate and in addition to the Compensation.

- C. CDD shall issue an invoice to HACLA for any such non-CDD fee citing the name of the Project for which the fee shall be incurred, the P.O. number, the type and purpose of such fee, the party to whom the fee shall be paid, and the amount of the fee. Upon receipt of such invoice, HACLA shall issue payment to CDD or the appropriate party for such fee.
- D. Within thirty (30) days of completion of the CDD Services for a Project, CDD shall issue an invoice to HACLA for payment of the Compensation (the "Invoice"). HACLA shall pay such Invoice no later than thirty (30) days from receipt of such Invoice (the "Payment Date").

§302. Acceptance/Cancellation

- A. In the event HACLA deems the CDD Services for a Project to be unacceptable or incomplete, HACLA shall notify CDD in writing no later than five (5) business days from receipt of the Invoice for such Project, such notice detailing the reasons for the incompleteness or unacceptability. CDD shall work to resolve any such issues in a timely manner, provided, however, that HACLA may not deem CDD Services unacceptable or incomplete due to any issues which are a result of any act or omission on the part of HACLA. In the event HACLA fails to notify CDD as above stated, the CDD Services for a Project shall be deemed accepted.
- B. Prior to the commencement of CDD Services for a Project, either HACLA or CDD may, in each of their sole discretion, cancel such Project without penalty. Any such Project cancelled prior to the commencement of CDD Services shall be deemed cancelled upon receipt by HACLA or CDD written notice from the other stating its desire to cancel the Project.
- C. In the event CDD Services for a Project has commenced, HACLA may cancel work on such Project for any reason, provided, however, that HACLA shall compensate CDD on a pro-rata basis from the Compensation for the percentage of CDD Services completed on such Project at the time CDD is notified by HACLA in writing of such cancellation. In such event, CDD shall issue to HACLA for such incomplete CDD Services an invoice detailing the work completed prior to HACLA's cancellation and the pro-rata share of the Compensation due to CDD for such work completed.
- D. In the event CDD Services for a Project has commenced, CDD may, in its sole discretion, cancel completion of CDD Services. In the event such cancellation is due to any act or omission on the part of HACLA, HACLA shall compensate CDD on a pro-rata basis for CDD Services completed prior to such cancellation as set forth in Section C of this §302.

IV.
STANDARD PROVISIONS

§401. Construction of Provisions and Titles

All titles or subtitles appearing in this Agreement have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions. The language of this Agreement shall be construed according to its fair meaning and not strictly for or against the City or the Agency. The singular shall include the plural. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used. The word "days" means calendar days, including weekends and holidays, unless otherwise specifically provided.

§402. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and the City. This Agreement shall be enforced and interpreted under the laws of the State of California and the City.

If any part, term or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining portions of provisions shall not be affected.

§403. Excusable Delays

In the event that performance on the part of any party hereto shall be delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of the party, none of the parties shall incur any liability to the other parties as a result of the delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder shall include, but not be limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes, freight embargoes or delays in transportation; to the extent that they are not caused by the party's willful or negligent acts or omissions and to the extent that they are beyond the party's reasonable control.

§404. Ownership of Documents and Records

All documents produced under this Agreement and all records obtained from other agencies, all in connection with the CDD Services, are agreed to be the property of HACLA, provided, however, that HACLA pays all compensation due to CDD in connection with CDD Services provided for such documents and records. CDD shall provide to HACLA all documents, records and reports for each Project accepted by CDD. CDD shall be allowed to retain copies of all documents and all records obtained from other agencies.

§405. Indemnification

Government Code Section 895.2 imposes joint civil liability upon public entities solely by reason of such entities being parties to the same agreement, as defined by Government Code Section 895. Accordingly, pursuant to Government Code Sections 895.4 and 895.6, the City and HACLA shall each assume the full liability imposed by law upon it, or any of its officers, agents or employees, for injury caused by any negligent or wrongful act or omission occurring in the performance of this Agreement. The City and HACLA shall each indemnify and hold harmless the other party for any loss, cost, or expense that may be imposed upon such other party by virtue of Government Code Section 895.2. In the event of a third-party loss caused by negligence, wrongful act or omission of both parties, each party shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed or judicially determined. The provisions of Civil Code Section 2778 regarding interpretation of indemnity agreements are hereby incorporated. The provisions of this paragraph survive expiration or termination of this Agreement.

§406. Dispute Resolution

Either party to this Agreement may invoke the dispute resolution procedure set forth herein. A matter shall be deemed to be in dispute upon receipt by one party of a written declaration of dispute by the other party. The declaration shall set forth the entire matter which is under dispute, the position claimed by the declaring party, all supporting arguments, and the resolution proposed.

All disputes shall first be submitted to informal dispute resolution between the HACLA Director of Modernization and the CDD Environmental Supervisor or their respective designees. These parties shall meet as many times as necessary to discuss and attempt resolution of the dispute.

If the dispute has not been resolved within fifteen (15) working days of receipt of declaration of dispute, either party may elect to submit the matter to resolution by the Deputy City Attorneys for each party.

The party submitting the dispute to the City Attorney's Office shall prepare a written statement, which shall include the declaration of dispute, a summary of the informal dispute resolution results, and a request for resolution by the City Attorney's Office. The statement shall be sent to both relevant Deputy City Attorneys and to the other party at the same time.

The decision of the Deputy City Attorneys shall be deemed final resolution of the dispute.

§407. Complete Agreement: Severability

This Agreement contains the full and complete Agreement between the two parties. No verbal agreement or conversation with any officer or employee of either party shall affect or modify any of the terms and conditions of this Agreement. This Agreement may be altered, modified or amended only in writing by all the parties hereto.

Should any portion of this Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Agreement shall continue as modified.

IN WITNESS WHEREOF, the City of Los Angeles and the Contractor have caused this Agreement to be executed by their duly authorized representatives.

APPROVED AS TO FORM AND LEGALITY:
CARMEN A. TRUTANICH, City Attorney

Executed this _____ day of _____, 2010

By: _____
Deputy City Attorney

For: THE CITY LOS ANGELES

Date: _____, 2010

Counsel to the City of Los Angeles

By: _____
RICHARD L. BENBOW
General Manager
Community Development Department

APPROVED AS TO FORM AND LEGALITY:
CARMEN A. TRUTANICH, City Attorney

Executed this _____ day of _____, 2010

By: _____
Michael V. Custodio, Deputy City Attorney

For: THE HOUSING AUTHORITY OF
THE CITY OF LOS ANGELES

Date: _____, 2010

General Counsel for the
Housing Authority of the City of Los Angeles

By: _____

ATTEST:
JUNE LAGMAY, City Clerk

By: _____

Date: _____

Council File/CAO File Number _____ Date of Approval: _____

The Agreement is Number _____ of City Contracts