

A RESOLUTION OF THE MILPITAS REDEVELOPMENT AGENCY APPROVING THE PURCHASE OF EVALUATION SERVICES FOR PHOTOVOLTAIC (SOLAR POWER) ANALYSIS OF VARIOUS CITY FACILITIES, BY PIGGYBACKING THE COUNTY OF SANTA CLARA’S CONTRACT WITH CH2M HILL

WHEREAS, Section I-2-3.07 of the Milpitas Municipal Code authorizes the Milpitas Redevelopment Agency to enter into contracts without competitive bid when the Purchasing Agent determines that a piggyback purchase is in the Agency’s best interest; and

WHEREAS, the County of Santa Clara’s solicitation that resulted in the contract with CH2M Hill was obtained and reviewed for compliance with the Purchasing Ordinance by the Purchasing Agent; and

WHEREAS, there are no local suppliers or contractors who could provide the same expertise for conducting evaluations of sites for solar power feasibility, cost, and generational potential at competitive rates; and

WHEREAS, the Agency’s specifications for evaluation services are the same as those listed in the County of Santa Clara’s solicitation; and

WHEREAS, the price for CH2M Hill evaluation services under the County contract is estimated to be lower than if the Agency made the purchase pursuant to the Purchasing Ordinance; and

WHEREAS, the price the Agency will pay for the evaluation services from CH2M Hill will be the same price as in the County of Santa Clara contract.

NOW, THEREFORE, the Board of the Redevelopment Agency of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The Redevelopment Agency Board has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The Executive Director, acting on behalf of the Agency, is hereby authorized and directed to execute a separate contract with CH2M Hill for solar site evaluation services, which references the solicitation by County of Santa Clara and the terms, conditions and prices in the County of Santa Clara contract, for a not-to-exceed amount of \$75,000.00.

PASSED AND ADOPTED this _____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Agency Secretary

Robert Livengood, Chair

APPROVED AS TO FORM:

Michael J. Ogaz, Agency Counsel

City of Milpitas – Service Agreement

DRAFT

draft

SECTION I: GENERAL INFORMATION

Date: Wednesday, December 23, 2009

P.O. Number: _____

(Procurement Department Use Only)

Agency / Dept. Name: City of Milpitas

Dept. No.: 300

Brief Description of Services: Vendor will assess the viability of photovoltaic solar power generation systems at 16 City of Milpitas sites.

Maximum Financial Obligation: \$ **\$75,000**

| | | |
|---------------------------|------------------------------------|---------------------------------|
| Term of Agreement: | Start Date: January 6, 2010 | End Date: March 31, 2010 |
|---------------------------|------------------------------------|---------------------------------|

SECTION II: PARTIES TO AGREEMENT

| CONTRACTOR | City of Milpitas |
|--|--|
| Legal notices pertaining to this agreement will be sent to the name, address and contact person below: | Mail Invoices to City of Milpitas at: |
| Name: CH2M HILL, Inc. | Agency/Dept: City of Milpitas Finance Department |
| Contact Person: Stephanie Stoppenhagen David Sweeney | Contract Monitor: Chris Schroeder/Greg Armendariz |
| Address: CH2M HILL, Inc. 325 E. Hillcrest Drive, Suite 125 Thousand Oaks, CA 91360-5828 Direct 805.371.7817 ext 38060 Mobile 805.405.0387 Fax 805.371.7818 www.ch2mhill.com | Address: 455 E. Calaveras Blvd. |
| City/State/Zip: Thousand Oaks, CA 38060 | City/State/Zip: Milpitas, Ca 95035-5411 |
| Telephone: 503-423-3998 Fax: 805-371-7818 | Telephone: 408-586-3161 Fax: 408-586-3170 |
| SCC Vendor No. (SAP): 1002156 | Fiscal Contact: Emma Karlen, Finance Director |

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SECTION III: CONTRACT AUTHORIZATION

It is agreed between City of Milpitas, hereinafter referred to as the “City” and Contractor that Contractor will, for the compensation described in this Agreement, perform the work described in Section V in accordance with all terms and conditions of this Agreement including all exhibits. In addition, City and Contractor certify that the Independent Contractor (Section IV) accurately reflects the anticipated working relationship between City and Contractor. Further, contractor certifies that the Contracting Terms and Conditions (Section VII), and insurance waiver information (Section VIII, Part B) of this form are true and correct. For independent Contractors, a certificate demonstrating appropriate insurance is required before work may begin.

Signatures

Contract is not valid until signed by Contractor and Procurement Department on behalf of the City. Signature of the City Manager is required for contracts executed by a delegation of authority

| | |
|--------------------------------|--------------|
| Contractor: | Date: |
| Procurement Department: | Date: |
| Project Manager: | Date: |
| Finance Director: | Date: |
| City Attorney: | Date: |
| City Manager: | Date: |

SECTION IV: INDEPENDENT CONTRACTOR

In accepting this contract, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be employed. Contractor certifies that to the best of his knowledge, no one who has or will have any financial interest under this contract is an officer or employee of City. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at times be considered independent contractors and not agents of City.

Contractor's Initials: _____.

SECTION V: CONTRACT SPECIFICS

Describe the services to be performed or unique elements of the contract. If more space is needed, attach a separate document—“Attachment A”. If the contractor wishes to add contract language or modify the Standard Service Agreement, then City Attorney must approve and sign the Agreement. City Attorney approval is not required if Attachment A refers to Contract Specifics listed on this page.

Service Description and Expected Outcome (scope of service)

Vendor will provide concise assessment of the opportunities for solar power generation at sixteen (16) City owned sites. The study will determine the total solar potential at these locations for several different types of solar installations: 1) rooftop, 2) ground mount or parking canopy, and 3) solar hot water. In addition, other types of renewable generation systems will be considered. A report will be generated that provides summary information

City of Milpitas – Service Agreement

relating to four discrete tasks: solar analysis, electrical and structural analysis, analysis of financing options, and delivery of a final report. The 16 sites are described on Attachment A1.

Task One – Solar Analysis

Vendor will create a map of the solar intensity of the parcel boundary for each site.

The study will provide information on operational, facility, geological or environmental challenges that may require further detailed assessment or that may limit the range of options for renewable energy generation. The study will provide information on these limitations if any for each site.

In addition, for each site the vendor will provide information on:

- a) total generation potential,
- b) anticipated electrical and/or natural gas savings,
- c) potential CO2 reductions,
- d) maximum recommended installation capacity,
- e) minimum recommended installation capacity,
- f) anticipated site specific challenges,

Task 2 – Electrical and Structural Analysis

- a) recommend and estimate cost of upgrades necessary to electrical transfer switches and other infrastructure necessary for interconnection,
- b) evaluate and recommend whether building rooftops are sufficiently structurally sound to bear loads of typical solar panels and/or solar hot water systems,
- c) compare system output to actual electrical consumption at the sites to match loads and system sizes for electricity generation,

Task 3 – Financing Options

For the following four sites only, **Tularcitos Water Tank, Main Sewage Pump Station & Corp. Yard, Ayer Pump Station & Water Tank (behind MSC), and the Gibraltar Pump Station & Water Tanks** the study will present a recommendation on the type of financing structure(s) the County should use to install the renewable generation system. Consideration should be given within this recommendation to existing rebate programs and grant opportunities – especially those that have minimal matching requirements. The study should evaluate alternative options for financing solar projects including direct purchase, Power Purchase Agreements, or lease to buy options. Included in these financing options will be an analysis of whether AB 2466 would provide more advantageous opportunities for the County than 3rd party ownership, and whether the project would meet CA Government Code Section 4217 cost effectiveness finding requirements. Finally, grant opportunities will be presented and evaluated for suitability.

Task 4 - Final Report

The conclusions of this study will be provided to the City Council in a summary report prepared by City staff. The final copy of the consultants report may be used as an attachment to the City's summary report to the City Council on potential solar or other renewable power generation projects. The conclusions of the study must be sufficient for the City to make a determination as to whether to proceed with solar projects at each site listed.

Or See Attachment _____

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a. Deliverables, Milestones, Timeline for Performance

City of Milpitas Deliverables to Vendor for all 16 sites will be provided within five working days of contract start:

- a) City will provide LiDAR data and ortho-photography if available. If not available Critigen will acquire on its own.
- b) City will provide electrical and structural drawings for all buildings on each site where possible
- c) City will provide access to buildings for electrical and structural inspections
- d) City will provide utility load data by month for the past year for each building
- e) City will provide drawings relating to sites where possible
- f) City will provide contact information of Fiscal support staff who may address questions relating to tax status of each site, and other fiscal information
- g) City will schedule and facilitate Kick-off meeting and site tours (within five working days of contract start)
- h) City will timely review draft reports and provide comments to vendor contact
- i) Site No. 9 is limited to an analysis of a ground-mount system on the parking lot site on the Main Sewage Pump Station & Corp Yard.

Vendor Deliverables to City

- a) Vendor will provide draft report for review and comment within 25 days of receiving all data to be provided by the City.
- b) Vendor will provide a copy of the Final report within 5 days of receiving comments on the Draft report.
- c) Vendor will provide 5 copies of Final report.
- d) Vendor will promptly respond to questions from City staff within one working day of written (email) question.

AND **See Attachment Exhibit B, Vendor's Proposal attached hereto and incorporated herein by this reference**

C. Performance Standards

List specific standards and criteria sufficient to evaluate Contractor's performance and quality of deliverables.

- Draft copies and final report must contain clear concise language without unexplained reference to technical terms.
- Time is of the essence in performing this contract.

Or **See Attachment** _____

D. Payment Schedule

Be specific as to hourly rate, payment by milestones, etc.

The Vendor will be compensated on a Time and Materials basis. The total Time and Materials budget for the scope of work is not-to-exceed \$_____. Vendor will notify the City when 75% of the budget has been expended. In no event will the Vendor be obligated to incur costs that exceed the budget.

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Monthly invoices will be issued by the Vendor for all services performed based on actual hours worked during the billing period. The City shall pay each invoice within 30 days. In the event of a disputed billing, only that portion will be withheld from payment and the undisputed portion will be paid.

Or See Attachment _____ attached hereto and incorporated herein by this reference

Changes to the terms and conditions on this page require approval of Milpitas City Counsel

SECTION VI: STANDARD PROVISIONS

A. Entire Agreement

This document represents the entire Agreement between the parties. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of the agreement are merged into this Agreement.

B. Conflicts of Interest

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest.

C. Governing Law, Venue

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the City of Milpitas.

D. Assignment

No assignment of this Agreement or of the rights and obligations hereunder shall be valid without the prior written consent of the other party.

E. Waiver

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing and shall apply to the specific instance expressly stated.

F. NON-DISCRIMINATION

Standard Non-Discrimination Language

Contractor shall comply with all applicable Federal, State, and local laws and regulations including City's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

-- OR --

Alternate Non-Discrimination Language Attached (Requires Milpitas City Counsel Approval)

G. TERMINATION

Standard Termination Language

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The City may, by written notice to Contractor, terminate all or part of this Agreement at any time for the convenience of the City. The notice shall specify the effective date and the scope of the termination. In the event of termination, Contractor shall deliver to City all documents prepared pursuant to the Agreement, whether complete or incomplete. Contractor may retain a copy for its records. Upon receipt of the documents, Contractor shall be compensated based on the completion of services provided, as solely and reasonably determined by City.

--OR --

Alternate Termination Language Attached (Requires Milpitas City Counsel approval.)

H. DISENTANGLEMENT

Contractor shall cooperate with City and City's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with City's efforts to ensure that there is no interruption of work required under the Agreement and no adverse impact on the provision of services or City's activities.

For any software programs developed for use under the City's Agreement, Contractor shall provide a nonexclusive, nontransferable, fully-paid, perpetual, irrevocable, royalty-free worldwide license to the City, at no charge to City, to use, copy, and modify, all work or derivatives that would be needed in order to allow City to continue to perform for itself, or obtain from other providers, the services as the same might exist at the time of termination.

Contractor shall return to City all City assets or information in Contractor's possession.

City shall be entitled to purchase at fair market value those Contractor assets used for the provision of services to or for City, other than those assets expressly identified by the parties as not being subject to this provision. Contractor shall promptly remove from City's premises, or the site of the work being performed by Contractor for City, any Contractor assets that City, or its designee, chooses not to purchase under this provision.

Contractor shall deliver to City or its designee, at City's request, all documentation and data related to City, including, but not limited to, the City Data and client files, held by Contractor, and Contractor shall destroy all copies thereof not turned over to City, all at no charge to City.

SECTION VII: CONTRACTING TERMS AND CONDITIONS

Contractor shall, during the term of this contract, comply with all applicable federal, state, and local rules, regulations, and laws.

Contractor shall maintain financial records adequate to show that City funds paid under the contract were used for purposes consistent with the terms of the contract. These records shall be maintained during the term of this contract and for a period of three (3) years from termination of this contract or until all claims if any, have been resolved, whichever period is longer, or longer if otherwise required under other provisions of this contract.

The failure of Contractor to comply with this Section or any portion thereof may be considered a material breach of this contract and may, at the option of the City, constitute grounds for the termination and/or non-renewal of the contract. Contractor shall be provided reasonable notice of any intended termination or non-renewal on the ground of non-compliance with this Section, and the opportunity to respond and discuss the City's intended action.

SECTION VIII: INSURANCE / INDEMNIFICATION

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Independent Contractors must comply with the City’s insurance and indemnification requirements as indicated below.

A. TYPE OF INSURANCE LANGUAGE

The following standard insurance and indemnification language is attached and incorporated into this agreement:

- B-2 Standard Service Contracts Above \$100,000
- B-2A Standard Service Contracts Between \$50,001 and \$100,000
- B-2B Standard Service Contracts Between \$10,001 and \$50,000
- B-2C Standard Service Contracts Up To \$10,000
- B-2D Environmental Services Contracts
- B-3 Professional Services Contracts (e.g. Medical, Legal, Financial, etc.)
- B-3A Architects and Engineers Service Contracts
- B-9 Part-time Trainer Contracts up to \$50,000

Modification or Waiver Attached if Appropriate

B. DETERMINATION OF INSURANCE REQUIREMENTS AND WAIVER DECLARATION

| | YES | NO |
|---|----------|----|
| 1. Workers Compensation: Does the contractor have employees? If “YES”, then, WORKER’S COMPENSATION/EMPLOYER’S LIABILITY INSURANCE IS REQUIRED. | X | |
| 2. Owned Auto Insurance: Will the contractor use any owned autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself? If “YES”, then INSURANCE FOR OWNED AUTOS IS REQUIRED. | X | |
| 3. Hired Auto Insurance: Will the contractor use any hired autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself? If “YES”, then INSURANCE FOR HIRED AUTOS IS REQUIRED. | X | |
| 4. Non-owned Auto Insurance: Will the contractor be using any non-owned autos in the provision of direct services, such as transporting clients in non-owned autos or operating non-owned autos in performance of the work itself? If “YES” then, INSURANCE FOR NON-OWNED AUTOS IS REQUIRED. | X | |

When “NO” is checked, this declaration will serve as a waiver for the specified type of insurance.

SECTION IX: FEDERAL / STATE REQUIRED PROVISIONS

(e.g. Drug-free Workplace Activity, HIPAA Business Associate Language, etc)

A. Federal Required Language Attached (optional)

Only add special language if services included in the contract require language different from or in addition to that in Section VI.

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~~B. State Required Language Attached (optional)~~

Only add special language if services included in the contract require language different from or in addition to that in Section VI.

SECTION X: ADDITIONAL ATTACHED EXHIBIT (S) (optional)

If exhibits are added to this Service Agreement, the contract will require review, approval and signature of City Attorney, with the exception of attachments that further explain the Contract Specifics as outlined in Section V, and insurance exhibits. Examples of attachments that require City Attorney approval are: 1) Contractor's terms and conditions that are different than, or add to the standard provisions language, 2) Any changes to the language in Section VI—Standard Provisions.

Exhibit Name(s)

Exhibit A – RFQ for Renewable Power Generation Site Assessment Study

Exhibit B – Vendor/CH2M HILL Proposal for Renewable Power Generation Site Assessment Study

Exhibit B2 (revised) – Insurance Requirements for Standard Contracts Above \$100,000.

Exhibit C – City of Milpitas Solar Sites

The Exhibits named above are attached hereto and incorporated herein by this reference

SECTION XI: MISCELLANEOUS

Statement of Economic Interest, FORM 700

If Form 700 is required, it must be filed with the City Clerk within 30 days of the contract's effective date of _____. Contractor must submit Form 700 by _____ to the City's Clerk.

ATTACHMENT C

**Scope of Service
Solar sites**

This scope of services includes the following sixteen (16) sites to be surveyed.

| | Site Name | Site Address | Zip Code | Financing Analysis | Type of Site |
|-----|---|--------------------------|-----------------|---------------------------|---------------------|
| 1. | Senior Center | 40 N. Milpitas Blvd. | 95035 | | Building/Parking |
| 2. | City Library | 160 N. Main St | 95035 | | Building/Parking |
| 3. | City Hall | 455 E. Calaveras Blvd. | 95035 | | Building/Parking |
| 4. | Public Works/Police Bldg. | 1265/1275 Milpitas Blvd. | 95035 | | Building/Parking |
| 5. | Corporate Yard Building | 1265 Milpitas Blvd. | 95035 | | Building/Parking |
| 6. | Sports & Teen Center (MSC) | 1325 E. Calaveras Blvd | 95035 | | Building/Parking |
| 7. | Fire Station No. 1 | 777 S. Main St. | 95035 | | Building/Parking |
| 8. | Fire Station No. 2 | 1263 Yosemite Dr. | 95035 | | Building/Parking |
| 9. | Fire Station No. 3 | 45 Midwick Dr. | 95035 | | Building/Parking |
| 10. | Fire Station No. 4 | 775 Barber Lane | 95035 | | Building/Parking |
| 11. | Tularcitos Water Tank | Tilarcitos Dr. | 95035 | Yes | Tank Roof |
| 12. | Main Sewage Pump Station & Corp. Yard | North McCarthy Blvd. | 95035 | Yes | Parking |
| 13. | Ayer Pump Station & Water Tank (behind MSC) | 1422 E. Calaveras Blvd. | 95035 | Yes | Building/Parking |
| 14. | Sal Cracolice Building | 540 S. Able St. | 95035 | | Building/Parking |
| 15. | Community Center | 457 E. Calaveras Blvd. | 95035 | | Building/Parking |
| 16. | Gibraltar Pump Station & Water Tanks | 641 Gibraltar Ct. | 95035 | Yes | Building/Tank Roofs |

City of Milpitas, California

BUDGET CHANGE FORM

| Type of Change | From | | To | |
|--|-------------------|----------|------------------|-----------|
| | Account | Amount | Account | Amount |
| Check one: | | | | |
| <input checked="" type="checkbox"/> Budget Appropriation | 390-2940 | \$55,000 | 390-3999 | \$ 55,000 |
| <input type="checkbox"/> Budget Transfer | 400-2970 | 10,000 | 400-3941 | 10,000 |
| | 450-2970 | 10,000 | 450-3941 | 10,000 |
| | 391-9518190153899 | 55,000 | 391-951819014800 | 75,000 |
| | 391-9518190153842 | 10,000 | | |
| | 391-9518190153845 | 10,000 | | |

Explain the reason for the budget change:

Check if City Council Approval required. Meeting Date: January 5, 2010

Background: On October 6, 2009, staff presented the Council an overview of the City of Milpitas Green House Gas Emissions Inventory Report and Proposed Energy Efficiency Actions Programs. One of these elements includes a proposal for installation of photovoltaic (solar) panels on various City facilities. City staff has been working with local and regional cities and public agencies including the Association of Bay Area Governments (ABAG,) and Joint Venture Silicon Valley, to develop efficient and cost effective processes for evaluation of public facilities for feasibility of solar powering, review of options available for financing and installation of photo voltaic (solar) panels on public facilities.

The City's practice of, and requirements for, utilizing a contract bid by another agency are defined and sanctioned under City of Milpitas Municipal Code Section I-2-3.07 "Piggyback Procurement." Staff's recommendation to piggyback on the County of Santa Clara contract with CH2M Hill is in full compliance with those requirements. CH2M Hill has reviewed the Milpitas public facilities, totaling 16 locations and is in agreement with providing these services at the same competitive rates, terms and conditions as the County of Santa Clara contract.

The new contract with CH2M Hill, would be based on time and materials, for an amount not to exceed total of \$ 75,000, and would be for a contract term of one year. This amount is considered reasonable for the services involved.

Fiscal Impact: A budget appropriation of \$75,000, is required in order to approve the contract to CH2M Hill - (\$55,000 from Redevelopment Tax Increment funds, \$10,000 from the Water Fund, and \$10,000 from the Sewer fund,).

| Itemization of funds, if needed: | | Amount |
|---|-------------------|----------------|
| Requested by: | Division Head: | Date: |
| | Department Head: | Date: 12/23/09 |
| Reviewed by: | Finance Director: | Date: 12/22/09 |
| Approved by: | City Manager: | Date: |
| Date approved by City Council, if required: | | Confirmed by: |