



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: November 28, 2019

Approved

D. D. SyL

Date

12/6/19

COUNCIL DISTRICT: 3

SUBJECT: FIRST AMENDMENT TO AN AGREEMENT WITH HR&A ADVISORS, INC., FOR SERVICES RELATED TO DEVELOPMENT AGREEMENT NEGOTIATIONS WITH GOOGLE

RECOMMENDATION

Approve the First Amendment to the Agreement with HR&A Advisors, Inc., in the amount of \$135,000, for a total compensation of \$425,000, and extend the term of the Agreement from June 30, 2020, to June 30, 2021, for services related to the negotiation of a Development Agreement with Google.

OUTCOME

Approval of this Amended Agreement enables the City to develop strategies for the negotiation of a Development Agreement with Google to determine value and feasibility of Community Benefits.

BACKGROUND

The City completed a competitive Request for Proposal process and entered into a written agreement with HR&A Advisors, Inc. on March 23, 2017 to assist in the Diridon Station Area Plan amendment process. The initial agreement was for a term from March 2017 to December 31, 2017 in the amount of \$100,000. The scope of services in the original agreement included evaluation of the Diridon Station Area Plan and development opportunities; it was fully funded by a grant from the California High Speed Rail Authority. A separate Agreement with HR&A was executed to deal specifically with the proposed Google project, in the amount of \$290,000. This Agreement was executed in June 2019 and expires June 30, 2020 (funding source: original Google reimbursement agreement).

Google submitted a Planning application on October 10, 2019. The City is preparing for negotiation with Google on a Development Agreement for future City Council consideration and there is an ongoing need for economic analysis and general negotiating support to assure the City achieves the benefits anticipated in the executed Memorandum of Understanding between City and Google.

ANALYSIS

HR&A Advisors is currently assisting the City in preparing to negotiate a Development Agreement with Google. The consulting team is working closely with City staff to develop economic models and proforma analyses of building types and uses as proposed by Google. These analyses will help frame the discussion with Google to define Community Benefits and assure the City achieves the goals established in the Memorandum of Understanding between the City and Google approved by the City Council on December 4, 2018.

Robust negotiations with Google are anticipated to begin in December and continue at least through summer 2020. The critical groundwork and analytical framework is being developed by HR&A, in conjunction with City staff. Additionally, HR&A has provided its depth of experience in negotiating plans and projects in other jurisdictions for both public and private clients to provide initial roadmaps for a negotiating process. The recommended Amendment provides funds to use through negotiation of the Development Agreement and Council consideration. The proposed Amendment extends the term to June 30, 2021.

The current Agreement with HR&A is \$290,000. The recommendation is to add \$135,000 to the Agreement for a total compensation of \$425,000. Additionally, the recommendation is to extend the term of the Agreement one year, to June 30, 2021, to avoid any lapse in contract commitments.

Unique Services

Municipal Code Section 4.12.235 outlines the process for acquiring unique services. Based on staff knowledge and interaction with HR&A there is no benefit to the City in reissuing a Request for Proposal for the services they are presently providing the City. Time is of the essence in preparing for and conducting the Development Agreement negotiations. The Development Agreement process must stay aligned with the other project elements and documents. Continuing the relationship with HR&A is critical to successful negotiations with Google.

4.12.235 - Unique services purchases.

The procurement authority may initiate a procurement for unique professional or other services where the procurement authority determines that an unusual or unique situation exists that make the application of the requirements for competitive procurement of a services agreement contrary to the public interest. Any special procurement under this section shall be made with

such competition as is practicable under the circumstance. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the Procurement authority in the department files.

A competitive procurement would be costly, time consuming, and unlikely to result in the identification of a candidate who better possesses the qualifications necessary to fulfill the particular needs of this work.

CONCLUSION

The scale of Google's proposal and potential for transformation of the Downtown and City are significant. It is imperative that the City staff be fully prepared with an array of metrics and logic to negotiate for the best possible package of development and Community Benefits. Retaining HR&A is a critical step in this preparation and execution.

EVALUATION AND FOLLOW-UP

Staff anticipates a study session and briefing of the City Council in spring 2020; currently envisioned for April 24. At this session, Council will be updated on the status of negotiations and the direction of Community Benefits. HR&A's analyses of opportunities and proposals for benefits is critical to this discussion and presentation.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the December 17, 2019 Council Meeting.

COORDINATION

This report was coordinated with the City Attorney's Office and the Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

The amendment of the agreement will be funded by the Diridon Station Area Development Planning appropriation in the General Fund. This appropriation was established as part of the 2019-2020 Adopted Budget with a budget of \$4.6 million and was funded by a contribution from Google (\$3.5 million), a transfer from the General Purpose Parking Fund (\$125,000), revenue from the Museum Place Development (\$20,000), and funding from the General Fund (\$1.0 million).

BUDGET REFERENCE

The table below identifies the fund and appropriation proposed to fund the amended contract recommended as part of this memorandum.

| Fund # | Appn # | Appn. Name | Total Appn | Amt. for Contract | 2019-2020 Adopted Operating Budget Page | Last Budget Action (Date, Ord. No.) |
|--------|--------|---|-------------|-------------------|---|-------------------------------------|
| 001 | 202S | Diridon Station Area Development Planning | \$4,642,913 | \$135,000 | IX-27 | 10/22/2019, Ord. No. 30325 |

CEQA

Not a Project, File No. PP17-001 Feasibility, and Planning Studies with no commitment to future actions and File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/
KIM WALES
Deputy City Manager
Director of Economic Development

For questions, please contact Nanci Klein, Assistant Director, at (408) 535-8184.