

City of Piedmont
COUNCIL AGENDA REPORT

DATE: March 1, 2010

FROM: Kate Black, City Planner

SUBJECT: Consultant Services Contract with LSA Associates, Inc. for Environmental Consulting Work Related to the Proposed Townhouse Development at 408 Linda Avenue

RECOMMENDATION

1. Approve the attached Contract with LSA Associates, Inc. (Exhibit B, page 4) in the amount not to exceed \$60,105.00 for services related to the preparation of environmental documents pursuant to the California Environmental Quality Act, related to the proposed townhouse development at 408 Linda Avenue (Application #08-0099); and
2. Authorize the Finance Director to establish a “pass-through” account in the amount of \$60,105, funded by the Piedmont Station LLC, developers of the proposed development at 408 Linda Avenue, to pay for the afore-mentioned services with LSA.

INTRODUCTION

Staff is recommending that the Council approve the attached Contract with LSA Associates, Inc., to provide technical and professional assistance to the City in the preparation of environmental analyses and documents related to the proposed townhouse development at 408 Linda Avenue.

BACKGROUND

On March 28, 2008, the Piedmont Station LLC submitted an application to redevelop the abandoned PG&E substation site at 408 Linda Avenue with 7 new, four-story townhouses. Since then, City staff have been working with the development team toward getting an application complete enough for processing for design review. During that time, the development team paid for the preparation of an Initial Study pursuant to the California Environmental Quality Act (CEQA), and LSA Associates was retained by the City to prepare it. The Initial Study has determined that the preparation of a focused Environmental Impact Report (EIR) will be required pursuant to CEQA, in order for the City to take action on the application.

Exhibit B (page 4) is the Contract, which was prepared by the City Attorney. Attached to it is the Scope of Services proposed by LSA Associates, Inc. that sets forth the steps and budget necessary to complete the EIR (Exhibit C, page 8). The EIR will “focus” on the aspects of the project identified in the Initial Study that may potentially create a negative impact on the

environment, along with possible mitigation measures. Using standard methodologies required by CEQA, the preparation of the focused EIR is expected to take approximately 8 months. The contract amount is a not-to-exceed amount. Should the project encounter unexpected tasks not anticipated under the Scope of Services (such as an extraordinary number of written public comments that require written responses), additional funds will be required of the development team. Any funds remaining in the budget at the end of the process will be returned to the development team (for example, if fewer public hearings are needed).

Should the Council approve the Contract with LSA Associates, the Piedmont Station LLC will be required to provide the City with a check in the amount of \$78,136.50, to cover the cost of the preparation of the EIR (\$60,105.00) and the City's 30% administrative fee (\$18,031.50), which will be placed in the General Fund to cover City and staff costs to oversee the project.

The attached memorandum from City Attorney George S. Peyton (Exhibit A, page A) addresses some of the specific provisions of the Contract between the City and LSA Associates.

EXHIBITS:

Exhibit A	Page 3	Supplemental Memorandum form George Peyton
Exhibit B	Page 4	Contract to provide Consulting Services with LSA Associates, Inc.
Exhibit C	Page 8	LSA Scope of Services

City of Piedmont

SUPPLEMENTAL COUNCIL AGENDA REPORT

DATE: March 1, 2010

FROM: George Peyton, City Attorney

SUBJECT: CONTRACT CONSIDERATIONS - LSA Associates

SUPPLEMENTAL INFORMATION: As a supplement to Kate Black's Agenda Report, the attached Contract with LSA Associates is similar to a prior Contract with LSA Associates relating to EIR work on Blair Park, with three additions to basic Contract terms:

1. In Paragraph 4 on Compensation all of the language beyond the first sentence is new. The second sentence emphasizes that the Contract price of \$60,105.00 will not be exceeded except by prior written consent of the City. The third sentence requires LSA to immediately notify the City whenever it determines that there will be a possibility of an increase in their Scope of Services, particularly if this would cause an increase in cost to the City. Since the nature of the EIR work to be performed by LSA in connection with the 408 Linda Avenue Project may sometimes turn up whole new areas or new aspects of prior Tasks that must be investigated, this requirement is meant to give a rapid heads-up to the City. It should be kept in mind that the owners of the 408 Linda Avenue Project are providing the funding for the EIR Study, and would also be required to fund additional costs.
2. Paragraph 16 on Termination is new and follows recommended language suggested in the past by Council Member Fujioka. However, based on the suggestion of Kate Black, I have eliminated reference to a mutual ability to terminate without cause on 60 days notice as had been part of the original suggested language from Council Member Fujioka. The reasoning behind this is that we do not want to provide LSA an opportunity to terminate without cause, since it could cause a major delay in locating a new consultant to complete and to be brought up to speed on the EIR work, and undoubtedly would increase the cost. In addition, because of the City's prior very positive experience with LSA, it is very unlikely that the City would ever want to terminate without cause.
3. Paragraph 17 on Equal Opportunity also mirrors language previously recommended by Council Member Fujioka.

RECOMMENDATION: I join Kate Black in recommending that the City Council approve the attached Contract with LSA Associates. LSA has approved the Contract as attached.

CONTRACT

This Contract made March 1, 2010, between the City of Piedmont, California, a municipal Corporation, 120 Vista Avenue, Piedmont, California 94611, referred to as "City" and **LSA ASSOCIATES, INC**, hereinafter referred to as "Independent Contractor."

1. City is a municipal corporation which needs certain services performed as more specifically set forth hereafter.
2. Independent Contractor agrees to perform these services for City under the terms and conditions set forth in this Contract.

3. Services

Independent Contractor shall provide documentation and associated services to meet the requirements of the California Environmental Quality Act (CEQA) for the 408 Linda Avenue Project as more specifically set forth in the Piedmont Station LLC - 408 Linda Avenue Townhouses Focused EIR Scope of Services Proposal ("the Proposal") dated February 11, 2010, which is attached hereto as Exhibit A and incorporated herein by reference.

4. Compensation

City will pay Independent Contractor an amount not to exceed **\$60,105.00** for the work set forth in the Proposal dated February 11, 2010, which is attached hereto and incorporated herein by reference. As stated in Exhibit A, attached hereto, the estimated budget will not be exceeded by Independent Contractor without the prior written consent of City. In addition, in connection with the work set forth in Independent Contractor's Scope of Services, Independent Contractor agrees that as soon as it is aware that it will be either necessary or appropriate to increase or expand its Scope of Services, particularly if this will require an increase in the amount of compensation above \$60,105.00 set forth above, Independent Contractor will immediately notify City of that fact in writing and promptly thereafter provide City with a detailed report on the expanded Scope of Services and any additional costs to City related thereto.

5. Term

The term of this Contract shall be until the completion of the items set forth in the Proposal dated February 11, 2010, which is attached hereto and incorporated herein by reference.

6. Contractual Relationship

The parties intend that an Independent Contractor-employer relationship will be created by this Contract. City is interested only in the results to be achieved, and the conduct and control of the work will lie solely with Independent Contractor. Independent Contractor is not to be considered agents or employees of City for any purposes, and neither Independent Contractor nor any employees of Independent Contractor are entitled to any of the benefits that City provides for City's employees. It is understood that City does not agree to use Independent Contractor exclusively. It is further understood that Independent Contractor is free to contract for similar services to be performed for other cities, persons or entities while they are under Contract with City. Independent Contractor shall be fully responsible for all income, social security or other taxes or deductions, including but not limited to worker's compensation and unemployment deductions, relating to the services it performs for City.

7. Hold Harmless Agreement

Independent Contractor agrees to defend, indemnify and hold the City harmless from any and all damages to the extent caused by reason of the Independent Contractor's negligent performance of this Contract. Independent Contractor shall have the responsibility of defending the City at their sole expense against any claim or legal action whatsoever relating to such negligence of Independent Contractor and City in connection with this Contract and to pay any such damages found due in any such claim or legal action; provided that in the event a court of law determines that Independent Contractor is not responsible for specific percentage of such damages and/or attorney's fees and/or costs of defense related thereto, such specific percentage shall not be the responsibility of Independent Contractor. City shall have the option of providing its own separate legal defense at its own expense at anytime, in which case City shall notify Independent Contractor. If Independent Contractor's professional liability insurance does not provide coverage for the City's defense set forth in this Section 7, Independent Contractor shall reimburse City for City's cost of defense to the extent caused by and arising out of Independent Contractor's negligence.

8. Insurance

Independent Contractor shall provide proof of insurance in accordance with Exhibit B, Insurance Requirements for Contractors (or Consultants), which is attached hereto and incorporated herein by reference.

9. Disputes

In the event of any disputes or disagreements between the parties relating to this Contract, the parties will make good faith efforts to resolve any such dispute or disagreement by negotiations between the City Administrator and/or his designated representative(s) and a Principal or Vice President of Independent Contractor and/or their designated representative(s). No legal action will be filed pursuant to Paragraph 14 unless the parties have met at least once pursuant to this Paragraph 9.

10. Assignability

Independent Contractor shall not assign, delegate, or transfer any interest in this agreement nor the performance of any Independent Contractor's obligations hereunder, without the prior written consent of the City.

11. Miscellaneous

As used in this Contract, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

12. Notices

Any notices to be sent pursuant to this Contract shall be directed to City at 120 Vista Avenue, Piedmont, California 94611, to LSA Associates, Inc. at 157 Park Place, Point Richmond, CA 94801, or at such other address as each party shall give the other in writing from time to time, and notices shall be deemed received at the time of personal delivery or three (3) working days after being placed in the United States Mail, postage prepaid, certified mail, return receipt requested.

13. Governing Law

This Contract shall be governed by the laws of the State of California.

14. Attorney's Fees

In the event of legal action by one party against the other relating to this Contract, the prevailing party shall be entitled to reasonable attorney's fees and costs as allowed by the Court.

15. Time

Time is of the essence of this Contract.

16. Termination

Either party may terminate this Contract for cause as follows:

- (1) The party electing to terminate shall give the other party written notice of termination at least five (5) days prior to the termination date, setting forth very specifically the grounds for termination, the specific provisions of the Contract that have been violated, and a full statement of the facts surrounding the violations(s).

- (2) If the terminated party so elects, the parties shall meet promptly and make good faith efforts to resolve the violation(s) in a mutually agreeable way.
- (3) If any such violation cannot be resolved by the parties at such meeting, or at any mutually agreed extension(s) of such meeting, the termination shall proceed.
- (4) If the violation(s) have not been resolved, the terminating party may proceed with termination, and with retaining other person(s) or entities to provide the necessary service, if the terminating party is the City.

17. Equal Opportunity

Independent Contractor shall insure that its policies and practices provide equal opportunity to all applicants and employees without regard to race, color, creed, gender, age, religion, national origin, sexual preference, marital status, disability, Acquired Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) and in addition, Independent Contractor must comply with the Americans with Disabilities Act.

IN WITNESS WHEREOF, the parties have executed this Contract at Piedmont, California, the day and year first above written

CITY OF PIEDMONT:

LSA ASSOCIATES, INC.

By: _____
Dean Barbieri, Mayor

By: _____
Malcolm Sproul, Asst. Secretary

Attest:

Approved as to form and legality:

Ann Swift, City Clerk

George S. Peyton, Jr., City Attorney

**PIEDMONT STATION LLC –
408 LINDA AVENUE TOWNHOUSES
FOCUSED EIR**

SCOPE OF SERVICES

Submitted to:

Kate Black
Public Works Department
City of Piedmont
120 Vista Avenue
Piedmont, California 94611

Prepared by:

LSA Associates, Inc.
157 Park Place
Point Richmond, California 94801
(510) 236-6810

LSA Project No. CPI0801

LSA

February 11, 2010

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APPROACH AND SCOPE OF WORK

This document provides LSA Associates, Inc. (LSA's) Approach, Scope of Work, Schedule and Fee for the Piedmont Station, LLC ("Applicant") – 408 Linda Avenue Townhouses Focused Environmental Impact Report (EIR) as required by the California Environmental Quality Act (CEQA). Piedmont Station LLC proposes to develop an approximately 0.4-acre site within the City of Piedmont with seven three-story over basement townhouse structures. The property is currently improved with an approximately 5,700-square-foot, two-story, concrete electrical utility substation that was vacated in 1991. The proposed project would involve: demolition and removal of the existing electrical substation building; removal of existing vegetation and excavation and/or placement of fill for the housing pads; construction of the seven new townhouse structures and associated site improvements; and landscaping and irrigation.

The following approvals and/or discretionary actions are required by the City for the project:

- Design Review Approval in accordance with Chapter 17, *Regulations Prescribing the Character of Construction*, and Chapter 19, *Subdivisions*, of the City's Municipal Code.
- Building Permit, including demolition and excavation.
- Tentative and Final Map, in accordance with Chapter 19, Subdivisions, of the City's Municipal Code.

APPROACH

LSA has prepared an Initial Study for the City of Piedmont to explore the potential effects of the proposed project. The Initial Study identifies mitigation, as applicable, for environmental topic areas to reduce potential impacts to less-than-significant levels. With implementation of the recommended mitigation measures, the following topics would not have potentially significant effects: aesthetics, agricultural resources, air quality, biological resources, hazards & hazardous materials, hydrology/water quality, land use, noise, mineral resources, population/housing, public services, recreation, transportation/traffic, and utilities/services systems. Cultural Resources is the only topic that warrants detailed analysis in the EIR because the existing PG&E substation building on the project site retains sufficient integrity to be eligible for listing in the California Register of Historical Resources. The PG&E substation building would be demolished to accommodate the proposed project. As a result, a Focused EIR is the appropriate level of environmental documentation.

SCOPE OF SERVICES

This section describes the scope of services, schedule and products for the 408 Linda Avenue Townhouses Focused EIR to be conducted by LSA Associates, Inc. (LSA) for the City of Piedmont.

Task A: Meetings and Project Management

Malcolm Sproul will serve as the Principal-in-Charge for this project. Kristin Granback, environmental planner, will serve as the Project Manager. Both will undertake a variety of general project management tasks throughout the EIR preparation period. Dennis Brown, an Associate from LSA's Berkeley office, will be providing technical direction throughout the CEQA process as necessary.

LSA management staff will be available to City staff throughout the environmental review process via phone and e-mail to gather information, review progress, and discuss staff comments and offer advice and input on the project. This scope of work includes any necessary site visits, team meetings, and public hearings. The proposed cost estimate includes attendance by the LSA Principal-in-Charge and Project Manager at up to two (2) staff meetings and four (4) public hearings.

LSA management staff will provide input on and monitor the scope, budget, and scheduling of the project. Management staff is also ultimately responsible for quality assurance for all work undertaken. They will review all text, tables, and/or graphics before these materials are presented to the City as administrative review documents. Project management tasks include: regular client contact, contract negotiation and contract management, oversight of in-house staff, schedule coordination and updates, and development of products. The budget assumes that the project manager will spend about four hours per month on these tasks over the approximately 8-month duration of the project, with occasional assistance from the Principal-in-Charge and the project's technical director.

Task B: Project Initiation

The start-up period will involve gathering any updated project information, contacting responsible agencies as necessary, refining the project description used in the Initial Study, and preparing a draft set of significance criteria.

1. Data Gathering and Evaluation

Any updated project information applicable to the 408 Linda Avenue Townhouses project will be collected from the City and evaluated in order to gain an understanding of the available information that will be used as part of the environmental review. LSA will also review all relevant documentation that has been prepared previously, including the previous cultural resources background research done of the project site by PAR Environmental Services, Inc. LSA will contact responsible or potentially affected agencies to identify issues regarding the proposed project as necessary.

2. Project Description

Using the project information included in the Initial Study and any additional project details provided by the City or Applicant, LSA will update the project description for the EIR describing the purpose, phasing, and physical elements of the project. The project description will include figures showing the location and boundaries of the project. As a part of the project description, LSA will incorporate a list of project objectives, to be provided by the Applicant. LSA will work closely with the City to ensure that the project description provides a level of detail appropriate for the identified objectives.

