

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, DECEMBER 8, 2014**

ITEM 10

REQUEST FOR APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF SANTA FE AND TIERRA CONTENTA CORPORATION (TCC) IN THE AMOUNT OF \$200,000 FOR ENGINEERING DESIGN (ALEXANDRA LADD)

PUBLIC WORKS COMMITTEE ACTION: Approved on consent

FUNDING SOURCE: 32507.510300.0112900

SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	Not present		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	Excused		
COUNCILOR RIVERA	X		

City of Santa Fe, New Mexico

memo

Date: November 24, 2014

To: Public Works – December 8th, 2014
Finance Committee – January __, 2015
City Council – January __, 2015

Via: Kate Noble, Interim Director, HCDD *KV*

From: Alexandra Ladd, Special Projects Manager, HCDD *ALL*

Re: Professional Services Agreement (\$200,000) for Tierra Contenta Corporation to complete engineering design (BU32507.510300.0112900)

ACTION REQUESTED

Recommend approval to the City Council of the attached professional services agreement between the City of Santa Fe and Tierra Contenta Corporation (TCC) in the amount of \$200,000. The scope of work requires TCC to conduct on- and off-site engineering design of the spine infrastructure extension of Paseo del Sol from Jaguar Drive to Herrera Drive. This project was approved as per the City's 2014 Capital Improvement Plan.

BACKGROUND

The Tierra Contenta Corporation (TCC) was established by the City of Santa Fe as a non-profit development corporation. TCC's mission is to implement the Tierra Contenta Master Plan that promotes walkability, traditional streetscapes, clustered housing, mixed-use districts, and access to an extensive open space and trails network. This development model is predicated on TCC selling parcels of land to developers and then using proceeds from the sale to build the "spine" infrastructure for the next phase of development. A portion of the proceeds is also used to pay back TCC's mortgage to the City.

ITEM AND ISSUE

The recent economic recession resulted directly in the decline of home building and other related industries. Without a steady stream of land sales to builders, TCC has not been able to provide the "spine" infrastructure (primarily connecting the two ends of Paseo del Sol) for the Phase 3 of the Master Plan. As the housing market recovers, development in Tierra Contenta is effectively stalled until the spine infrastructure for the next phase is provided. For this reason, TCC applied for and was granted funds from the City's CIP bond. This funding, in the amount of \$200,000 will cover engineering design costs for the project, for which the total cost is estimated to be approximately \$8 million.

Housing (Alexandra Ladd) and Public Works staff (Robert Siqueiros) are board members of TCC, as per the organization's charter. For this reason, RB Zaxus, Engineer Supervisor with Land Use, will review the submitted design drawings and approve the disbursement of funds.

CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Tierra Contenta Corporation (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the City per the approved 2014 Capital Improvement Plan:

- A. On and off-site engineering design of the spine infrastructure extension of Paseo del Sol (West) from Jaguar Drive to the roundabout at the intersection of Paseo del Sol and Herrera Drive.
- B. The engineering design shall include roadway, sewer, and water for the extension of Paseo del Sol.
- C. The engineering design shall include surveying, mapping, plan preparation, right-of-way and easement plat, drainage analysis, geotechnical investigation, Phase 1 Environmental Report, streetscape plan and construction cost estimates.

2. STANDARD OF PERFORMANCE; LICENSES

- A. The Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered a sum not to exceed two hundred thousand dollars (\$200,000), inclusive of applicable gross receipts taxes. Compensation shall be paid for services actually rendered as follows:

- (1) Pre Engineering Design Phase - \$40,000
- (2) Preliminary Design Phase - \$110,000
- (3) Final Design Phase - \$50,000

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt, approval and acceptance by the City of detailed statements containing a report of services completed.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and shall terminate on December 31, 2015 unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 30 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, therefore the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement,

insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the

services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout

the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the

Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed

between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:
Engineering Division
PO Box 909
Santa Fe, NM 87504-0909

Contractor:
TIERRA CONTENTA CORP
PMB 220, 369 Montezuma Ave.
Santa Fe, NM 87501

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

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CITY OF SANTA FE:

CONTRACTOR:

JAVIER M. GONZALES, MAYOR

JAMES HICKS
EXECUTIVE DIRECTOR

DATE: _____

DATE: _____

CRS# 02-266188-003
City of Santa Fe Business
Registration # 14-00066354

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:

KAB *10/29/14*

KELLEY A. BRENNAN,
CITY ATTORNEY

APPROVED:

TERESITA GARCIA,
ASSISTANT FINANCE DIRECTOR

32507.510300.0112900
Business Unit Line Item



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

1 **FOR:** ORIGINAL CONTRACT or CONTRACT AMENDMENT

2 Name of Contractor Tierra Contenta Corporation

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$200,000.00

Termination Date: December 31, 2015

Approved by Council Date: _____

or by City Manager Date: _____

Contract is for: Conduct needs assessment to determine the outreach and education needs of spanish speaking community regarding fair housing rights

Amendment # 1 to the Original Contract# 13-0347

Increase/(Decrease) Amount \$ 25,000

Extend Termination Date to: June 30, 2014

Approved by Council Date: _____

or by City Manager Date: July 26, 2013

Amendment is for: Increase contract amount to \$25,000 and extend term to June 30, 2014

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ 200,000.00 of original Contract# _____ Termination Date: 12/31/2015
Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____
Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____
Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____
Reason: _____

Total of Original Contract plus all amendments: \$ 200,000.00



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP# _____ Date: _____

RFQ _____ Date: _____

Sole Source _____ Date: _____

Other Inclusion in the Capital Improvement Plan

6 **Procurement History:** One year terms
example: (First year of 4 year contract)

7 **Funding Source:** CIP Funds **BU/Line Item:** 32507.310300.0112900

8 **Any out-of-the ordinary or unusual issues or concerns:**

(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** Roberta Catanach
Phone # _____ -6421

10 **Certificate of Insurance attached.** (if original Contract)

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments: