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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** November 24, 2010

**IBA Report Number:** 10-88

**City Council Docket Date:** November 30, 2010

**Item Number:** 330

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# Authorization of a Five Year As-Needed Environmental Monitoring Professional Services Agreement

## OVERVIEW

The City Council docket for November 30, 2010 includes Item 330, which asks the Council to authorize the execution of a five year as-needed environmental monitoring professional services agreement with MACTEC Engineering and Consulting, Inc (MACTEC). The as-needed contract is for an amount not-to-exceed \$15 million with a term of five years.

This item was heard at the Natural Resources and Culture Committee (NR&C) on September 8, 2010 and the committee voted 2-1 (with one councilmember absent) to forward the item to the City Council without a recommendation.

Under this agreement, MACTEC will provide tasks to comply with various regulatory requirements. In addition to maintaining compliance with the Municipal Storm Water Permit, the Department must also address requirements related to Areas of Special Biological Significance (ASBS) as well as current and future TMDL requirements. In support of these activities, MACTEC will assist the City with the following general areas:

- Task Management and Administration;
- Preparing monitoring documents in accordance with the California State Water Resources Control Board's Surface Water Ambient Monitoring Program (SWAMP);
- Conducting monitoring, analyzing data, preparing recommendations and reports;
- Attending meetings and providing presentations.

The Storm Water Department has provided information to the IBA outlining each task in the proposed contract's Scope of Services and indicated the various regulatory

requirements that the task intends to address, citing the specific regulatory document and section. This information is attached to this report.

## FISCAL/POLICY DISCUSSION

The Storm Water Department's FY 2011 Operating Budget totals \$35.18 million. Funding for this agreement will be expended from the "Miscellaneous Professional and Technical Services" account within the Storm Water Department's Budget. Funding in this account for FY 2011 totals \$13.1 million.

The proposed agreement allows the City to contract services on an as-needed, hourly fee basis. As explained by the Purchasing and Contracting Department, this five year agreement allows for flexibility by the City to access technical expertise without committing to a guaranteed level of spending each fiscal year under the contract. Services will be determined by the City as needed, and assigned to the consultant via task order. Each task order will include a specific scope of services, a cost estimate, and the timeframe for completion. The amount of task orders submitted to the consultant can differ year-to-year during the duration of the contract. It is important to note that the as-needed contract allows the City the right to terminate the contract at anytime.

The duration of the proposed contract is for five years. No additional City Council approval would be necessary during the five year contract period unless an extension or change in terms of the scope is desired. The level of Council oversight differs from the contract the Department currently has with Weston Solutions, Inc. (Weston). The Weston contract will expire at the end of FY 2011 and the proposed contract with MACTEC will take its place. While the duration of the Weston contract was also for five years, the City Council approved a base year for the contract with four annual renewal options. With the Weston contract, the Department was required to return to the City Council each year to execute the option years.

The IBA contacted the Purchasing and Contracting Department asking why a base and option year type of agreement similar to the Weston Solutions contract was not used for the proposed MACTEC contract. The Purchasing and Contracting Department indicated that this type of as-needed agreement is more appropriate for the type of service being requested.

If the Council preferred the agreement to be structured as a one year agreement with options similar to the Weston Solutions contract, it would require the reissuance of a Request for Proposal (RFP) and the process would take between six to eight months to complete.

To avoid delay of executing the proposed contract for services that are required by the Municipal Permit, the IBA does not recommend reissuing a new RFP. However, we recognize that a five-year contract term has limited future oversight by the City Council.

Due to this, the IBA recommends that the contract include a not-to-exceed requirement of \$3.0 million annually. If the Department anticipates that spending will exceed the \$3.0 million in a fiscal year, the Department must return to the City Council for authorization. This ensures that year-to-year expenditures under this contract will not vary significantly without the knowledge of the City Council. It should also be noted that future years funding for the contract would be dependent upon the inclusion of the expenditures in the annual Storm Water Department budget which requires City Council approval.

At the September 8<sup>th</sup> NR&C meeting, it was suggested that a not-to-exceed amount of \$1.5 million annually be authorized for this contract. The Storm Water Department indicated that based on prior year and anticipated expenditures for these tasks, \$1.5 million annually would be insufficient to properly address the workload. The table below provides an outline of the expenditures for this work over the past five fiscal years:

Weston Solutions, Inc. Contract Expenditures		
FY 2006	\$	2,100,000
FY 2007	\$	3,140,000
FY 2008	\$	2,532,500
FY 2009	\$	2,532,500
FY 2010	\$	2,532,500
Total: \$		12,837,500

To provide further City Council oversight, we also recommend that the Storm Water Department report to the NR&C on a semi-annual basis regarding the number of task orders that have been issued and the total amount expended. This reporting will allow for important oversight of spending patterns for this contract. In addition, this will enable the City Council to be more informed on appropriate funding levels for the Storm Water Department based on priorities and funding available during the annual budget development process.

## CONCLUSION

The IBA will continue to review consultant agreements, especially those with multi-year terms and significant dollar values, in order to determine relative priorities given limited funding. With an expected deficit of at least \$73 million projected for FY 2012, it is important that the City does not obligate itself to ongoing expenditure commitments without appropriate oversight.

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Attachment: "Scope of Work for Professional Services for As-Needed Environmental Monitoring for the Storm Water Department"