

**REPORT TO MAYOR AND COUNCIL**

TO THE HONORABLE MAYOR AND COUNCIL:

DATE: June 22, 2009

SUBJECT: APPROVING AN AMENDMENT TO THE AGREEMENT FOR PROFESSIONAL SERVICES WITH MOORE IACOFANO GOLTSMAN, INC. FOR PROJECT NO. 2035, ADA TRANSITION PLAN UPDATE, EXTENDING THE AGREEMENT TO DECEMBER 31, 2009

Report in Brief

On May 23, 2006, the Council approved Project No. 2035, ADA Transition Plan Update, and approved a Professional Services Agreement (Agreement), with Moore Iacofano Goltsman, Inc. (MIG) to update the City's ADA Transition Plan. The Agreement expires June 30, 2009. However, additional time is required for MIG to complete its scope of work. Adding time to the contract does not add cost.

Staff recommends that the Council approve the proposed Amendment to the Agreement with MIG extending the term of the Agreement to December 31, 2009 (Attachment 1); and authorizing the City Manager to execute the Amendment.

Background

The Americans with Disabilities Act (ADA) was enacted in 1990 and became effective on January 26, 1992. As required by Title II of the ADA, in 1992 the City performed a thorough self-evaluation of City programs, services, facilities, policies, practices, and procedures. From this evaluation, an ADA Transition Plan (Plan) was developed and implemented to eliminate structural and non-structural barriers that could prevent persons with disabilities from accessing City facilities or participating in employment opportunities, programs, activities, and services.

Since the first ADA Transition Plan was prepared, the City has completed many construction projects that have improved the accessibility of City facilities, either through construction of new facilities or modifications of existing ones. However, the City needs to update its 1992 ADA Transition Plan for a number of reasons.

First, a Ninth Circuit Court of Appeals ruling requires the addition of public sidewalks to a City's ADA Transition Plan. In the landmark case of *Barden v. City of Sacramento*, the plaintiffs alleged that the City of Sacramento violated the ADA and the Rehabilitation Act by failing to install curb ramps in newly-constructed or altered sidewalks, and by failing to maintain sidewalks so as to ensure accessibility by persons with disabilities. In June 2002, the Ninth Circuit Court of Appeals issued a decision on *Barden v. City of Sacramento*, ruling that public sidewalks are a service, program, or activity within the meaning of Title II of

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the Americans with Disability Act (ADA). As such, the sidewalks are subject to the Self Evaluation and Transition Plan requirements applicable to “programs” under the ADA regulations and accessibility guidelines. In effect, the Barden v. City of Sacramento ruling requires a public entity to conduct a Self Evaluation and prepare a Transition Plan for public sidewalks.

Second, in the last 17 years since the 1992 Plan was prepared, many City programs have moved or changed. An updated Transition Plan will take an inventory of modifications that are still needed on facilities included in the previous Transition Plan, and add new facilities that have been built or added to the City’s inventory since the previous Plan was prepared.

On May 23, 2006, the Council approved Project No. 2035 and approved the Agreement with MIG to update the City’s ADA Transition Plan. This update inventories all modifications still needed on facilities THAT WERE included in the previous Transition Plan, and adds new facilities that have been built or added to the City’s inventory since the previous Plan was prepared. The Plan will also include an inventory of accessibility problems on public sidewalks and walkways, as required pursuant to Barden v. City of Sacramento.

The current agreement expires on June 30, 2009; a time extension requires Council approval.

Discussion

The original Agreement provides authority to staff to extend the term of the Agreement. Staff has reached its authorized limit; therefore staff is presenting this proposed Amendment to the Council for its consideration.

The preparation of the Self Evaluation and Transition Plan Update has taken longer than anticipated for several reasons:

- The complex and sensitive nature of accessibility issues increased the number of draft submittals from two to six
- The data collection entailed surveys of every program and facility within the City including:
 - City policies
 - City programs
 - City-owned and – occupied facilities
 - City-owned properties leased to others
 - Properties owned by others that are leased by the City of Concord
 - Existing traffic-signalized intersections with the City of Concord
- Several City facilities were not available for survey during summer months

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Additionally, the schedule has been extended due to the departures of the lead staff managing the project and other staff providing project support. The recruitment time associated with filling the vacancies resulted in delays.

The remaining work to be completed by MIG includes finalizing the Plan, conducting a presentation of the Plan, and providing database training to staff. Based on MIG's estimated timeline, staff believes the remaining scope of work will be completed within budget by December 31, 2009. However, the City's Agreement with MIG will terminate on June 30, 2009. Therefore, staff requests Council approval on the proposed Amendment to the Agreement with MIG extending the term to December 31, 2009. This will allow adequate time for MIG to complete the City's ADA Transition Plan Update and provide any necessary services thereafter.

Fiscal Impact

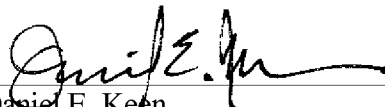
The extension of the term of the Agreement will have no fiscal impact.

Public Contact

Posting of the Council agenda.

Recommendation for Action

Staff recommends the City Council approve an amendment to the Agreement for Professional Services with MIG for Project No. 2035, ADA Transition Plan Update, extending the agreement to December 31, 2009; and authorizing the City Manager to execute the amendment.



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Attachment 1: Fifth Amendment to Agreement for Professional Services

**FIFTH AMENDMENT TO AGREEMENT
FOR PROFESSIONAL SERVICES**

THIS AMENDMENT, made and entered into this 22nd day of June 2009, by and between the City of Concord (hereinafter "CITY"), located in the County of Contra Costa, State of California, and **Moore Iacofano Goltsman, Inc.**, (the "CONSULTANT"), whose address 800 Hearst Avenue, Berkeley, California.

THE PARTIES ENTER INTO THIS AGREEMENT based upon the following facts, understandings and intentions:

The CITY desires to contract with CONSULTANT and CONSULTANT to contract with the CITY for provision by CONSULTANT to the CITY for professional services as further described herein, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties herein contained, the parties hereto agree as follows:

1. SERVICES

CONSULTANT shall provide services for **PJ# 2035 ADA Transition Plan Update**, in accordance with the Professional Services Agreement dated May 23, 2006, amended November 26, 2007, December 11, 2007, July 1, 2008 and December 3, 2008.

2. COMPENSATION

CONSULTANT shall be compensated on a time and material basis as described in the Professional Services Agreement dated May 23, 2006 and amended on December 3, 2008.

TERM.

The term of this Amendment shall be from **July 1, 2009 through December 31, 2009**. All other terms and conditions in the Professional Services Agreement dated May 23, 2006, amended November 26, 2007, December 11, 2007, July 1, 2008, and December 3, 2008 shall remain in full force and effect.

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1 **IN WITNESS WHEREOF**, the parties hereto have accepted, made, and executed this
2 Agreement upon the terms, conditions, and provisions above stated, the day and year first above
3 written.

4 CONSULTANT

CITY OF CONCORD

5 By: _____

By: _____

6 Name: Timothy A. Gilbert

Name: Alex Pascual, P.E.

7 Title: Principal

Title: Director of Building, Engineering and
Neighborhood Services

8 Address: 800 Hearst Avenue
Berkeley, CA 94901

Address: 1950 Parkside Drive
Concord, CA 94519

9 Telephone: (510) 845-7549

Telephone: (925) 671-3470

10
11 APPROVED AS TO FORM:

ATTEST:

12
13 _____

14 City Attorney

City Clerk