



Legislation Text

File #: 12-1354, **Version:** 5

Community Development Agency, Long Range Planning Division, recommending the Board approve and authorize the Chair to sign an amendment to an Agreement for Services, and a corresponding amendment to an applicant funding agreement, to ensure the project applicant continues to fund all costs, as follows:

- 1) Amendment III to Funding Agreement 245-F1311 with Marble Valley Company, LLC increasing funding by \$137,340 for a new total not-to-exceed amount of \$939,150;
- 2) Amendment IV to Agreement for Services 268-S1311 with ICF Jones and Stokes, Inc., increasing the maximum obligation by \$112,340 for a total not-to-exceed amount of \$595,257 to provide direct consultant services to the County for preparation of Environmental Impact Reports and planning consultation services, and extend the termination date of the agreement three (3) additional years; and
- 3) Approve and authorize the Chair to sign a Budget Transfer to increase revenue and appropriations by \$137,340 associated with the Funding Agreement. (4/5 vote required)

FUNDING: Applicant Funding Agreement.

DEPARTMENT RECOMMENDATION:

The California Environmental Quality Act (CEQA) and County CEQA Resolution 61-87 allow the County to hire consultants, funded by the applicant, to prepare complex and comprehensive CEQA documents such as Environmental Impact Reports (EIR). On November 13, 2012, item number 8, the Board approved Agreement for Services No. 268-S1311 with ICF Jones and Stokes, Inc. (ICF) to prepare an EIR for the proposed Village of Marble Valley Specific Plan Project (Project). Services provided by ICF are fully funded by the applicant, Marble Valley Company, LLC, through Funding Agreement No. 245-F1311.

The information in this EIR will help the public, staff, the Board, and others evaluate and make decisions regarding the application. Processing the application and preparing an EIR does not represent a commitment that the proposed Project, or any portion of the application, will be approved by the Board.

Based on changes to the Project schedule, description, and recent CEQA lawsuits, as well as the need for additional public outreach, additional funds will be necessary to prepare the EIR for the proposed Village of Marble Valley Specific Plan.

Community Development Agency (CDA), Long Range Planning Division (LRP) recommends the Board approve and authorize the Chair to sign the following:

- 1) Amendment III to Funding Agreement No. 245-F1311 with Marble Valley Company, LLC increasing funding by \$137,340 for a new total not-to-exceed amount of \$939,150;
- 2) Amendment IV to Agreement for Services No. 268-S1311 with ICF Jones and Stokes, Inc., increasing the maximum obligation by \$112,340 for a total not-to-exceed amount of \$595,257 to provide direct consultant services to the County for preparation of EIRs and planning consultation services; and

3) Approve and authorize the Chair to sign a Budget Transfer to increase revenue and appropriations by \$137,340 associated with the Funding Agreement.

DISCUSSION/BACKGROUND:

On November 13, 2012, item number 8, the Board approved Agreements for Services with ICF and Michael Baker International (MBI) (formerly Pacific Mutual Consultants) for three proposed Specific Plans: Central El Dorado Hills, Village of Marble Valley, and Lime Rock Valley. The Agreements provide direct consultant services to the County for preparation of EIRs (ICF) and planning consultation services (MBI), to be fully funded by the respective applicants: Serrano Associates, LLC; Marble Valley, LLC; and G3 Enterprise, LLC.

On November 13, 2012, item numbers 7, 9, and 10, the Board also approved separate Funding Agreements with each applicant. The Funding Agreements establish a legally binding mechanism that allows the County to be fully reimbursed by the applicants for costs incurred under these contracts. Consultants began work on November 19, 2012.

On March 11, 2014, item number 8, the Board approved Amendment I to Agreement for Services No. 268-S1311, authorizing additional funding to accommodate extended project schedules and additional work needed to complete processing of the application. The Board also approved Amendment I to Funding Agreement No. 245-F1311 with Marble Valley Company, LLC., increasing the amount of the Agreement to cover the additional work by ICF and MBI. The amended Funding Agreement also included funding for a separate Agreement with Goodwin Consulting Group, to provide assistance with reviewing Fiscal Impact Analysis prepared by the applicants and preparing/reviewing Public Facilities Financing Plans.

On July 22, 2014, item number 6, the Board approved Amendment II to Agreement for Services No. 268-S1311, authorizing an amendment to Exhibit C, the Fee Schedule.

Based on changes to the Project schedule, description, and recent CEQA lawsuits, as well as the need for additional public outreach, additional funds were necessary to prepare the EIR for the proposed Village of Marble Valley Specific Plan.

On January 23, 2015, \$77,280.23 was transferred from Task 1 and Tasks 3 through 8 to Task 4 to enable ICF to complete the Draft EIR (DEIR). Amendment III to Agreement for Services No. 268-S1311 was necessary to replenish the budgets for Task 1 and Tasks 3 through 8, and to provide additional services described in Attachment 4A.

On April 14, 2015, item number 10, the Board approved Amendment III to Agreement for Services No. 268-S1311 with ICF Jones and Stokes, Inc., increasing the maximum obligation by \$111,321 for a total not-to-exceed amount of \$482,917 to provide direct consultant services to the County for preparation of EIRs and planning consultation services. This Amendment also required an Amendment II to Funding Agreement No. 245-F1311 with Marble Valley Company, LLC increasing funding by \$199,719 for a new total not-to-exceed amount of \$801,810.

On January 28, 2016, \$17,440 was transferred from Tasks 5 and 6 to Tasks 4 and 10 to enable ICF to address the GHG analysis described below and to provide for additional direct expenses. This Amendment IV to Agreement for Services No. 268-S1311 is necessary to replenish the budget for Tasks 5 and 6 and to provide additional funding to address the following:

GHG Analysis

After the Project EIR had been released for public review, the California Supreme Court released a decision in *Center for Biodiversity et al. v. California Department of Fish and Wildlife* (S217763) (hereafter *Newhall Ranch*). The Court invalidated the *Newhall Ranch* EIR's extensive GHG analysis in part because the analysis incorrectly used "business as usual" (BAU) as the threshold for analysis. While the decision confirmed use of BAU and consistency with Assembly Bill (AB) 32 as a valid significance threshold under CEQA, the Court found that the EIR lacked substantial evidence in demonstrating that the project's reduction of 31% below project BAU is consistent with the AB 32 statewide goal of 29% below statewide BAU. The Court held that applying statewide BAU targets for the entire state (which consider both existing and new development) to a project-level analysis without any adjustments to isolate new development emissions or consider unique geographic conditions is misleading and is a purpose very different from the AB32 Scoping Plan's original design.

The Court also ruled that use of AB 32 consistency and BAU thresholds as significance criteria are valid for 2020, but post 2020 needs to "consider the project's effects on meeting longer term emissions reduction targets." The topic of whether a GHG emissions analysis must conform to the 2050 reduction target (80% of 1990 emissions by 2050) expressed in Governor Schwarzenegger's Executive Order (EO) S-03-05 is before the Supreme Court in the *Cleveland National Forest Foundation v. San Diego Association of Governments* (hereafter *SANDAG*) case. This passing statement in the *Newhall Ranch* decision may foreshadow the Court's direction in the *SANDAG* case. Given the Court's recent predilection for "splitting the baby" in its CEQA decisions, it is conceivable that it could hold that although local agencies are not strictly subject to EO S-03-05, they must nonetheless address its target in their GHG analyses, if only to describe the project's future emissions and general ability to meet the target.

Similar to the *Newhall Ranch* EIR, the Project EIR utilized a BAU threshold to evaluate the significance of project-level GHG emissions. The BAU threshold was based on the statewide AB 32 goals and was adopted by the Sacramento Air Quality Management District (SMAQMD) and recommended by the El Dorado County Air Quality Management District (EDCAQMD). Based on the holding in the *Newhall Ranch* decision, the GHG impact analysis for 2020 must be revised. Specifically, the analysis should utilize a combination of a bright-line threshold and efficiency threshold per service population to determine the significance of 2020 GHG impacts. The project EIR should also include a post-2020 analysis consistent with the mention in *Newhall Ranch*. Analyzing emissions beyond 2020 will ensure the EIR is consistent with the recent legislative attention (proposed SB 32), Governor Brown's Executive Order (EO) B-30-15, and ongoing Scoping Plan update regarding post 2020 goals, as well as scientific evidence that additional GHG reductions are needed through 2050 to stabilize carbon dioxide concentrations.

Additional Project Management

Consultant shall attend additional meetings and coordinate internal staff to address the revised analysis and incorporate it into the ADEIR.

Additional Direct Expenses

The original scope of work assumed reprographics expenses based on a 200-page environmental document. The actual environmental document page count is anticipated to be as much as four times that number, not including attached appendices, which will be on CD. Consultant shall prepare

and deliver up to 25 hard copies of the DEIR for County use and deliver CDs with executive summaries to the State Clearinghouse.

Project Contingency

This task provides for unanticipated services or costs necessary to successfully complete the Project. Potential services covered under this task are described in Attachment 5D.

ALTERNATIVES:

CEQA and Chapter 5.3 (A) of County Resolution 61-87 allow applicants to retain a consultant to prepare and submit an EIR to the County. Should the Board decide not to approve amendments to the Agreement for Services and Funding Agreement, staff anticipates the applicant would retain a consultant to complete preparation of the EIR and submit it to the County. The County would no longer be as directly involved in the preparation of the EIR.

Staff believes it is in the County's best interest to remain in control of this process to ensure that the County's and public's interests are directly represented throughout the EIR preparation process, and to maintain maximum control over the content and analysis in the EIR. There is no cost to the County under any scenario; all costs are paid by the project applicant whether or not the amendments are approved.

OTHER DEPARTMENT/AGENCY INVOLVEMENT:

County Counsel and Risk Management have approved these Amendments.

CAO RECOMMENDATION:

Chief Administrative Office recommends moving staff's recommendations.

FINANCIAL IMPACT:

There is no change to Net County Cost associated with this item. No costs are to be incurred by the County. All costs are paid by the project applicant. A budget transfer is needed to increase the total available budget to meet the financial obligations of the agreements that are entirely funded by the applicant. \$25,000 of the budget transfer will be utilized to fund a separate item being brought forward at the same meeting to supplement funding for consultant services retained to assist staff with processing the referenced Specific Plan Project applications (Legistar File 12-1372).

ASSOCIATED PLANNING CONSULTANT SERVICES:

Under separate agenda items (Legistar Files 12-1352 and 12-1370), staff is recommending similar amendments to Agreements 239-S1311 and 267-S1311 with ICF and amendments to the associated Funding Agreements (Nos. 240-F1311 and 241-F1311). Under another separate agenda item (Legistar File 12-1372), staff is recommending Amendment IV to Agreement 365-S1210 with MBI to include additional as-needed planning services for the applications. The additional budget for MBI will also be included in the three Amendments to the respective Funding Agreements.

CLERK OF THE BOARD FOLLOW UP ACTIONS:

1) Following approval by County Counsel and Risk Management, the Clerk will obtain the Chair's signature on two (2) originals of Amendment III to Funding Agreement No. 245-F1311 with Marble Valley Company, LLC and two (2) originals of Amendment IV to Agreement for Services No. 268-S1311 with ICF;

- 2) The Clerk will return one (1) fully executed original of Amendment III to Funding Agreement No. 245-F1311 and one (1) fully executed original of Amendment IV to Agreement for Services No. 268-S1311 to Long Range Planning for transmittal to the consultant; and
- 3) Approve and authorize the Chair to sign a Budget Transfer to increase revenue and appropriations by \$137,340 associated with the Funding Agreement.

CONTACT:

Shawna Purvines, Principal Planner
Long Range Planning Division