



Legislation Text

File #: 24-0871, **Version:** 1

Planning and Building Department, Planning Division, recommending the Board:

- 1) Approve and authorize the Chair to sign Amendment VIII to Agreement 516 with ICF Jones and Stokes, Inc. for the provision of preparing environmental documents and planning consultation services for the proposed Village of Marble Valley Specific Plan, increasing the amount by \$51,171.69 for a new total agreement amount of \$838,713.73, and updating the Scope of Work, with no changes to the term of the Agreement, expiring on November 12, 2025; and
- 2) Approve and authorize the Chair to sign Funding Agreement 24-0007 with Marble Valley Company LLC, requesting a total deposit of \$69,869.99, that allows County to be reimbursed by the applicant for costs incurred under Consultant contracts.

FUNDING: Developer Funded.

DISCUSSION/BACKGROUND

Agreement 516 (008D-A-12/13-BOS)

The California Environmental Quality Act (CEQA) and County CEQA Resolution 61-87 allow the County to utilize consultants, funded by the Project applicant, to prepare complex and comprehensive CEQA documents such as Environmental Impact Reports (EIRs).

The County has had an Agreement with ICF Jones and Stokes Inc. (ICF) since 2012 to prepare an EIR for the proposed Village of Marble Valley Specific Plan (Project), Agreement 516 (Agreement) (formerly 268-S1311 and also referred to as 008D-A-12/13BOS). Since the execution of the original Agreement, there have been seven (7) amendments to the Agreement to address various components including, but not limited to, changes in CEQA Guidelines, adjustments to the fee schedule, and budget increases to support the extended Project schedules and additional associated work.

Proposed Amendment VIII to Agreement 516 will increase the not-to-exceed amount by \$51,171.69 for a new not-to-exceed amount of \$838,713.73 and update the Scope of Work (Exhibit A-6, Additional Scope of Services), with no changes to the term of the Agreement. The Project EIR has been delayed due to comprehensive amendments to CEQA Guidelines, including a new Fire Hazard section and a suite of provisions aimed at improving the analysis of greenhouse gas (GHG) emissions and climate change impacts in State environmental reviews, necessary revisions to the Air Quality (AQ) section, and a general hold on the Project as requested by the applicant. Due to these aforementioned delays and new requirements, it is necessary to increase the not-to-exceed amount and update the Scope of Work to see the Project through to completion.

In addition to the changes noted above, other minor administrative changes were determined necessary and made throughout the Agreement as amended. These changes include: replacing Amended Exhibit D-3, Amended Cost Estimate with Amended Exhibit D-4, Amended Cost Estimate to reflect the increase in the not-to-exceed amount; and updated contract provisions, updating Article X, Default, Termination, and Cancellation and replacing Section B, Article XIII, Insurance.

Funding Agreement 24-0007

Prior to proposed Funding Agreement 24-0007 (Funding Agreement), the County collected a deposit as a source of funding for the agreements between County and its Consultants for preparation of the Project EIR through Funding Agreement 006D-F-12/13-BOS (also referred to as Funding Agreement 245-F1311).

Under Funding Agreement 006D-F-12/13-BOS and associated Amendments, the County collected a deposit in a total amount of \$281,745, at the time representing thirty percent (30%) of the estimated costs associated with preparation of the Project EIR and related planning services, to be drawn against once the Project EIR reached seventy percent (70%) completion. In September of 2016, the County began to draw on Funding Agreement 006D-F-12/13-BOS deposit of \$281,745, as the Project EIR was estimated to be at seventy percent (70%) completion. The deposit was depleted over time and the applicant continued to pay invoices associated with the development of the Project EIR through monthly Time and Materials billings, as established by a Payment of Processing Fees Agreement.

Currently, the Project EIR is not yet complete, nor has final County action and/or withdrawal of the Project occurred due to comprehensive amendments to the CEQA Guidelines, including a new Fire Hazard section and a suite of provisions aimed at improving the analysis of GHG emissions and climate change impacts in State environmental reviews, necessary revisions to the A) section, and a general hold on the Project as requested by the applicant.

The Project has resumed as of early 2023 and additional funding is required for completion of the Project EIR. Due to Funding Agreement 006D-F-12/13-BOS deposit being depleted, Funding Agreement 24-0007 is being proposed to collect a total deposit amount of \$69,869.99, representing thirty percent (30%) of the estimated remaining costs for completion of the Project EIR, \$232,899.97. The deposited amount of \$69,869.99 will remain in a non-interest-bearing account until final County action and payment of any and all final Planning Division invoices. Applicant will continue to pay invoices associated with Project through monthly Time and Materials billings, as set forth in the Agreement for Payment of Processing Fees. Should a substantial increase in costs associated with development of the Project EIR occur, the Planning Division may request an additional deposit. Such request will require processing of an Amendment to the Funding Agreement.

Approval of an amendment to the Agreement and approval of the Funding Agreement will allow for the completion of the environmental review process to identify, evaluate, and prevent the potential environmental effects of the Project, and does not promote Project or provide approval for any aspect of the Project.

ALTERNATIVES

The Board may choose not to approve the proposed Contract Amendment and Funding Agreement. As a result, the Department anticipates the applicant will obtain a Consultant to complete the preparation of the EIR and submit to the County, which would limit the County's oversight of the EIR's preparation and completion.

The Department believes it is in the County's best interest to remain in an oversight role in the process for the Project 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.

PRIOR BOARD ACTION

On November 13, 2012 (File No. 12-1354, Item No. 9), the Board approved an Agreement with ICF for the proposed Village of Marble Valley Specific Plan. This Agreement provides direct Consultant services to the County for the preparation of the Project EIR and planning consultation services, to be fully funded by the applicant, Marble Valley Company LLC. The Board also approved a Funding Agreement with the applicant, Funding Agreement 006D-F-12/13-BOS. The Funding Agreement establishes a legally binding mechanism that allows the County to be reimbursed by the applicant for costs incurred under the Consultant Agreements.

On March 11, 2014 (File No. 12-1354, Item No. 8), the Board approved Amendment I to Agreement 516, increasing the maximum obligation by \$70,209, for a total not-to-exceed amount of \$371,596, to accommodate extended Project schedules and additional work needed to complete the processing of the application. Simultaneously, the Board approved Amendment I to Funding Agreement 006D-F-12/13-BOS, increasing the amount of the Funding Agreement to cover the additional work to be provided by Consultants.

On July 22, 2014 (File No. 12-1370, Item No. 7), the Board approved Amendment II to Agreement 516, authorizing an amendment to Exhibit C to adjust ICF's hourly rates.

On April 14, 2015 (File No. 12-1354, Item No. 10), the Board approved Amendment III to Agreement 516, increasing the maximum obligation by \$111,321, for a total not-to-exceed amount of \$482,917, and extending the term of the Agreement by two (2) years for a revised expiration date of November 13, 2012, to provide consultant services for the preparation of EIRs and planning consultation services. This Amendment also required an Amendment II to Funding Agreement 006D-F-12/13-BOS, increasing funding by \$199,719 for a new total not-to-exceed amount of \$801,810.

On March 8, 2016 (File No. 12-1354, Item No. 12), the Board approved Amendment IV to Agreement 516, increasing the maximum obligation by \$112,340, for a total not-to-exceed amount of \$595,257, and extending the term of the Agreement by three (3) years for a revised expiration date of November 12, 2020, to increase the budget for Task 6, providing additional funding to address GHG concerns, and to allow additional time for processing of the Project EIR. This Amendment also required an Amendment III to Funding Agreement 006D-F-12/13-BOS, increasing funding by \$137,340 for a new total not-to-exceed amount of \$939,150.

On June 23, 2020 (File No. 20-0444, Item No. 36), the Board approved Amendment V to Agreement 516, increasing the total compensation by \$120,939.64, for a not-to-exceed amount of \$716,196.64, extending the term by three (3) years, updating the fee schedule, and changing the Contract Administrator. This Amendment was required to address changes in AQ regulations and models to continue with preparing draft environmental documents and providing planning consultation services.

On July 19, 2022 (File No. 22-1102, Item No. 37), the Board approved Amendment VI to Agreement 516, increasing the total compensation by \$71,345.40, for a new not-to-exceed amount of \$787,542.04, and revising the Scope of Work, with no changes to the term of the Agreement. This Amendment was deemed necessary to address changes to CEQA Guidelines, the changing AQ and GHG regulations, and due to the general passage of time.

On October 24, 2023 (File No. 23-1443, Item No. 18), the Board approved Amendment VII to

Agreement 516, extending the term of the Agreement by two (2) years for a revised expiration date of November 12, 2025, with no changes to the not-to-exceed amount or Scope of Work. This Amendment was necessary in order to continue preparing the EIRs and to address the ongoing revisions and additions to CEQA guidelines.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel and Risk Management have approved the proposed amendment to the Agreement and Funding Agreement.

CAO RECOMMENDATION

Approve as recommended.

FINANCIAL IMPACT

There is no change to Net County Cost associated with this item as no costs are to be incurred by the County. All costs are paid by the Project applicant. Funding for these services has been included in the Department's Fiscal Year 2023-24 budget. Funding for these services beyond Fiscal Year 2024-25 will be included in subsequent budgets accordingly.

CLERK OF THE BOARD FOLLOW UP ACTIONS

- 1) The Clerk of the Board will obtain the Chair's signature on two (2) original copies of Amendment VIII to Agreement 516;
- 2) The Clerk of the Board will forward one (1) fully-executed original Amendment VIII to Agreement 516 to the Chief Administrative Office, Procurement and Contracts Division, for further processing;
- 3) The Clerk of the Board will obtain the Chair's signature on one (1) original copy of Funding Agreement 24-0007; and
- 4) The Clerk of the Board will forward the fully-executed original Funding Agreement 24-0007 to the Planning and Building Department to the attention of Robert Peters, Deputy Director of Planning.

STRATEGIC PLAN COMPONENT

N/A

CONTACT

Robert Peters, Deputy Director of Planning
Planning and Building Department