

TO: James L. App, City Manager
 FROM: Mike Compton, Director of Administrative Service
 SUBJECT: State Mandated Cost Claiming Services
 DATE: July 18, 2006

NEEDS:

For the City Council to consider approving an agreement with AK & Company for cost claiming services.

FACTS:

1. California Senate Bill 90, provides that public agencies shall be reimbursed for costs associated with compliance with legislation.
2. The City has filed annual reimbursement claims, prepared by a third party expert, for many years.
3. The City utilized AK & Company last year and may opt to continue this contract relationship.

ANALYSIS &
 CONCLUSION:

This year the City has received the proposal from AK & Company to provide mandated cost reimbursement services. AK & Company has provided this service to the City for several years.

The reimbursement revenues received have exceeded the cost to prepare the claims. Many of the mandates are complicated and would require considerable staff time to prepare without using outside expertise.

FISCAL
 IMPACT:

There are sufficient appropriations available to pay for these services. Historically costs and revenues received are noted as follows:

	Total Contract <u>Costs</u>	Total Claim <u>Revenues</u>	Net General Fund <u>Revenue</u>
Fiscal Year 2006	\$ 6,500	\$ 38,285	\$ 31,785
Fiscal Year 2005	7,213	26,640	19,427
Fiscal Year 2004	6,650	26,640	19,990
Fiscal Year 2003	3,800	78,005	74,205
Fiscal Year 2002	3,600	49,324	45,724
Fiscal Year 2001	5,700	101,757	96,057
Fiscal Year 2000	6,500	73,422	66,922
Prior Eight Years	28,814	173,576	144,762

The cost proposed by AK & Company to provide mandated cost reimbursement services is \$4,000 which is \$2,500 less than last year. This reduction in the contract is directly related to the mandates, Open Meetings Act and Mandate Reimbursements, the State is no longer reimbursing.

OPTIONS:

- a. Adopt Resolution No. 06-xxx authorizing the Director of Administrative Services to engage the services of AK & Company to provide mandated cost claiming services on behalf of the City; or
- b. Amend, modify or reject above option.

RESOLUTION NO. 06-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING A PROFESSIONAL CONSULTING SERVICES AGREEMENT
WITH AK & COMPANY TO PROVIDE STATE MANDATED
COST CLAIMING SERVICES

WHEREAS, the filing of State mandated cost claims is of financial benefit to the City of Paso Robles; and

WHEREAS, the City for many years has engaged the services of an outside expert to maximize reimbursement; and

WHEREAS, AK & Company has been performing said claiming services on the behalf of the City; and

THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of El Paso de Robles that the contract attached herewith as Exhibit "A" is hereby approved and the Director of Administrative Services is authorized to execute said contract.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 18th day of July 2006 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah Robinson, Deputy City Clerk

CONSULTANT'S SERVICES AGREEMENT

THIS AGREEMENT, made this 19th day of July, 2006, by and between the CITY OF PASO ROBLES, California (hereinafter referred to as "CITY"), and AK & Company (hereinafter referred to as "CONSULTANT").

WHEREAS, CITY desires to retain a qualified individual, firm or business entity to undertake state mandated costs reimbursement claiming services; and

WHEREAS, CITY desires to engage CONSULTANT to provide services by reason of its qualifications and experience for performing such services, and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. CONTRACT COORDINATION

- a. CITY. The Director of Administrative Services shall be the representative of CITY for all purposes under this Agreement. The Director, or his designated representative, hereby is designated as the Contract Manager for the CITY. He shall supervise the progress and execution of this Agreement.
- b. CONSULTANT. CONSULTANT shall assign a single Contract Manager to have overall responsibility for the progress and execution of this Agreement for CONSULTANT. Anita Worlow is hereby designated as the Contract Manager for CONSULTANT. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Contract Manager for any reason, the Contract Manager designee shall be subject to the prior written acceptance and approval of the CITY's Contract Manager.

2. DUTIES OF CONSULTANT

- a. Services to be furnished. CONSULTANT shall provide all specified state mandated costs reimbursement claiming services as set forth in the attached Exhibit "A".
- b. Laws to be observed. CONSULTANT shall:
 - (1) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by CONSULTANT under this Agreement;
 - (2) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in CONSULTANT's performance

under this Agreement, or the conduct of the services under this Agreement;

- (3) At all times observe and comply with and cause all of its employees to observe and comply with all said laws, ordinances, regulations, orders, and decrees mentioned above.
- (4) Immediately report to the CITY's Contract Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement.

- c. Release of reports and information. Any video tape, reports, information, data, or other material given to, or prepared or assembled by CONSULTANT under this Agreement shall be the property of CITY and shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the CITY's Contract Manager.
- d. Copies of video tapes, reports and information. If CITY requests additional copies of video tapes, reports, drawings, specifications, or any other material in addition to what the CONSULTANT is required to furnish in limited quantities as part of the services under this Agreement, CONSULTANT shall provide such additional copies as are requested, and CITY shall compensate CONSULTANT for the costs of duplicating of such copies at CONSULTANT's direct expense.
- e. Qualification of CONSULTANT. CONSULTANT represents that it is qualified to furnish the services described under this Agreement.

3. DUTIES OF CITY

CITY agrees to cooperate with CONSULTANT and to perform that work described in Exhibit "A" attached hereto and incorporated by this reference. Consultant will inform City staff of the necessary data for timely claims submission. Consultant will presume that all data provided by the City is correct and complete. There will be no Consultant liability for unfilled claims resulting from insufficient data or data not provided in a timely fashion.

The City and Consultant agree that Consultant requested data must be provided by City staff either within three (3) weeks of the request or three (3) weeks prior to the filing deadline, whichever occurs first. Data not received within this timeframe will not be considered to be provided in a timely fashion.

4. COMPENSATION – Annual Claims

The CONSULTANT will perform the work as described in Exhibit "A" and shall be paid a fixed fee of four thousand dollars (\$4,000) for all annual claims. All work performed by CONSULTANT shall be compensated as follows:

- a. 50% payable in July 2006.
- b. 50% payable in February 2007.

5. COMPENSATION – New Claims

The CONSULTANT will perform the work as described in Exhibit “A” and shall be paid a fixed fee of one thousand dollars (\$1,000) for each new mandate filed. All work performed by CONSULTANT shall be compensated as follows:

Payable within 30 days of invoice.

6. TIME FOR COMPLETION OF THE WORK

All work shall be completed and in final “submission” form by CONSULTANT to meet the State Controller’s Office requirements for filing such claims. In no event shall the work not be completed and submitted by January 16, 2007.

7. TEMPORARY SUSPENSION

The CITY’s Contract Manager shall have the authority to suspend this Agreement wholly or in part, for such period as he deems necessary due to unfavorable conditions or to the failure on the part of the CONSULTANT to perform any provision of this Agreement. CONSULTANT will be paid the compensation due and payable to the date of temporary suspension.

8. SUSPENSION: TERMINATION

- a. Right to suspend or terminate. The CITY reserves the right to terminate this Agreement for any reason by notifying CONSULTANT in writing seven (7) days prior to termination and by paying the compensation due and payable to the date of termination; provided, however, if this Agreement is terminated for fault of CONSULTANT, CITY shall be obligated to compensate CONSULTANT only for that portion of CONSULTANT services which are of benefit to CITY. Said compensation is to be arrived at by mutual Agreement of the CITY and CONSULTANT and should they fail to agree, then an independent arbitrator is to be appointed and his decision shall be binding upon the parties.
- b. Return of materials. Upon such termination, CONSULTANT shall turn over to the CITY immediately any and all copies of videotapes, studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT, and for which CONSULTANT has received reasonable compensation, or given to CONSULTANT in connection with this Agreement. Such materials shall become the permanent property of CITY. CONSULTANT, however, shall not be liable for CITY’s use of incomplete materials or for CITY’s use of complete documents if used for other than the project or scope of services contemplated by this Agreement.

9. INSPECTION

CONSULTANT shall furnish CITY with every reasonable opportunity for CITY to ascertain that the services of CONSULTANT are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the CITY's Contract Manager's inspection and approval. The inspection of such work shall not relieve CONSULTANT of any of its obligations to fulfill its Agreement as prescribed.

10. OWNERSHIP OF MATERIALS

All original drawings, videotapes and other materials prepared by or in possession of CONSULTANT pursuant to this Agreement shall become the permanent property of CITY, and shall be delivered to the CITY upon demand.

11. ASSIGNMENT: SUBCONTRACTORS: EMPLOYEES

This Agreement is for the performance of planning services of the CONSULTANT and is not assignable by the CONSULTANT without prior consent of the CITY in writing. The CONSULTANT may employ other specialists to perform services as required with prior approval by the CITY.

12. NOTICES

All notices herein under shall be given in writing and mailed, postage prepaid, by Certified Mail, addressed as follows:

CITY: Michael Compton
Director of Administrative Services
City of Paso Robles
1000 Spring Street
Paso Robles, Ca. 93446
(805) 237-3999
(805) 237-6565 FAX
mcompton@prcity.com

CONSULTANT: Anita K. Worlow
Principal
AK & Compnay
3531 Kersey Lane, Suite M
Sacramento, CA 95864
916-972-1666
916-972-1666 FAX
neat@sbcuc.net

13. INTEREST OF CONSULTANT

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONSULTANT further covenants that, in the performance of this Agreement, no sub-contractor or person having such an interest shall be employed. CONSULTANT certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of CITY. It is expressly agreed that, in the performance of the services hereunder, CONSULTANT shall at all times be deemed an independent contractor and not an agent or employee of CITY.

14. INDEMNITY

CONSULTANT hereby agrees to indemnify and save harmless CITY, its officers, agents and employees of and from:

- a. Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any injury or death of or damage to any person or corporation caused by any negligent act or omission of CONSULTANT under this Agreement or of CONSULTANT's employees or agents;
- b. Any and all damage to or destruction of the property of CITY, its officers, agents or employees occupied or used by or in the care custody, or control of CONSULTANT, or in proximity to the site of CONSULTANT's work, caused by any negligent act or omission of CONSULTANT under this Agreement or of CONSULTANT's employees or agents;
- c. Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any injury to or death of or damage suffered or sustained by any employee or agent of CONSULTANT under this Agreement, however caused, excepting, however, any such claims and demands which are the result of the sole negligence or willful misconduct if CITY, its officers, agents, or employees;
- d. Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any infringement or alleged infringement of any patent rights or copyrights or claims caused by the use of apparatus, appliance, or materials produced or furnished by CONSULTANT under this Agreement; and
- e. Any and all penalties imposed or damages sought on account of the violation of any law or regulation or if any term or condition of any permit, when said violation of any law or regulation or of any term or condition of any permit is due to negligence on the part of the CONSULTANT.
- f. CONSULTANT, at its own cost, expense, and risk, shall defend CITY from any and all claims, demands, suits, actions, or other legal proceedings, including those to enforce any penalty that may be brought against CITY, its officers, agents or employees, and pay and satisfy any

judgment or decree that may be rendered against CITY, its officers, agents, or employees in any such suit, action or other legal proceeding, when same were due to negligence of the CONSULTANT.

15. WORKERS COMPENSATION

CONSULTANT certifies that it is aware of the provisions of the Labor Code of the State of California, which require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certified that it will comply with such provisions before commencing the performance of the work of this Agreement.

16. INSURANCE

- a. At the request of the CITY, CONSULTANT shall provide proof of comprehensive general liability insurance (\$300,000) (including automobile) satisfactory to the CITY.
- b. CONSULTANT shall provide proof of special insurance of the types (such as "errors and omissions" or professional liability) and in the amounts as may be set forth on Exhibit "A".

17. AGREEMENT BINDING

The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

18. WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

19. COSTS AND ATTORNEY'S FEES

The prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

20. DISCRIMINATION

No discrimination shall be made in the employment of persons under this Agreement because of the race, color, national origin, ancestry, religion or sex of such person.

If CONSULTANT is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the performance of this Agreement, it shall thereby be found in material breach of this Agreement. Thereupon, CITY shall have the power to cancel or suspend payable to CONSULTANT the sum of Twenty-five Dollars (\$25) for each person for each calendar day during which such person was discriminated against, as damages for said breach of contract, or both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent federal agency or officer shall constitute evidence of a violation of contract under this paragraph.

If CONSULTANT is found in violation of the nondiscriminatory provisions of this Agreement or the applicable affirmative action guidelines pertaining to this Agreement, CONSULTANT shall be found in material breach of the Agreement. Thereupon, CITY shall have the power to cancel or suspend this Agreement, in whole or in part, or to deduct from the amount payable to CONSULTANT the sum of Two Hundred fifty Dollars (\$250) for each calendar day during which CONSULTANT is found to have been in such noncompliance as damages for said breach or contract, or both.

21. AGREEMENT CONTAINS ALL UNDERSTANDINGS

This document (including all exhibits referred to above and attached hereto) represents the entire and integrated Agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, or Agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and CONSULTANT. All provisions of this Agreement are expressly made conditions. This Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement the day and year first above written.

Company Name CITY OF PASO ROBLES

AK & Company Director of Administrative Services

By _____
Anita K. Worlow

By _____
Michael J. Compton

EXHIBIT "A"

State Mandated Costs Reimbursement Claiming Services

Scope of Services. Consultant will perform in a professional manner the following services:

- a) By January 16, 2007, prepare and submit mandate reimbursement claims to the State Controller's Office according to the State Controller's 2006 annual claiming instructions.
- b) Prepare and submit new mandate reimbursement claims according to the claiming instructions issued during the 2006-2007 fiscal year. Claims covered under this section include those for which new claiming instructions are issued with a claim due date other than January 16, 2007.
- c) Advise the City of issues from the State Controller's Office associated with any mandate reimbursement claims prepared and submitted by the Consultant.
- d) Both direct and indirect costs may be included in mandate reimbursement claims submitted by the Consultant. The Consultant may choose to use the State Controller's ten percent (10%) indirect cost rate or choose to calculate a higher rate if necessary City records are available.

Waiver of Submission of Claims. Submission of claims pursuant to items a) and b) above may be waived. If a waiver is exercised by either party, the Consultant will be paid by the City for all work completed prior to and until the waiver's date of effect. The amount paid will not exceed the dollar amount indicated in Section 4) and 5). In case of a waiver, the Consultant will be paid based on the percentage of work required to submit the claims that were completed prior to the effective date of the waiver.

- e) At Option of the City. Pursuant to a specific State claiming instruction, at the City's discretion, it may instruct the Consultant not to file a specific claim or claims. This instruction must be in writing and provided to the Consultant at least thirty (30) days prior to the due date of the claim. The date the Consultant receives the City's written instruction will be the effective date of the City's waiver.
- f) At Option of the Consultant. At the Consultant's discretion, Consultant may advise the City of the reasons it does not intend to file a specific claim. The date the Consultant mails its notification to the City will be the effective date of the Consultant's waiver. The City will expect the Consultant to file any pertinent claim that meets the minimum limit set by the State.