

TO: James L. App, City Manager
FROM: Mike Compton, Director of Administrative Services
SUBJECT: Transit Assistance Agreement
DATE: August 15, 2006

Needs: For the Council to adopt resolution approving an agreement with McGuire Management Consultancy.

Facts:

1. The adopted budget contains an appropriation for a full time transit manager (coordinator).
2. The authorized position remains unfilled and the budgeted resources are available.
3. Rather than fill the vacancy at this time, it may be more cost effective and efficient to contract for the needed assistance.

Analysis
and
Conclusion:

Even before the recent approved modifications to transit services, additional assistance was needed to adequately address transit operational deficiencies, especially the lack of marketing. The Council, recognizing this need, approved a new full time permanent staff position for transit operations. With the new transit modifications and adoption of the Marketing Plan, the need for additional assistance is even greater.

During budget deliberations, staff indicated that it might be possible to purchase the needed assistance in lieu of the long-term commitment that accompanies increased staffing. Thus, staff is proposing to hire professional assistance on an hourly contract basis to assist in implementing the recently adopted Short Range Transit Plan and the Marketing Plan. This contract may also address any recommendations that may arise of the City's Triennial Performance Audit.

Staff contacted two firms that are known to provide contract transit services. Only Philip McGuire of McGuire Management Consultancy responded. He is highly recommended and has enjoyed a long distinguished career in the public transportation arena. A copy of his resume is attached.

Should this arrangement not meet with the desired results, the contract may be easily canceled and the staffing option pursued.

Fiscal
Impact:

None. The adopted budget provided a \$60,000 appropriation in fiscal year 2006 and \$62,400 in fiscal year 2007. It is an ongoing base budget addition. The contract will be managed to stay within budget.

It is possible but not guaranteed that this will be the least costly method of method addressing the City's transit assistance needs.

Options:

- a. That the Council adopt Resolution No.06 – XXX approving an agreement with McGuire Management Consultancy for contract transit assistance; or
- b. Amend, modify, or reject the above option.

RESOLUTION NO. 06 -

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EL PASO DE ROBLES
APPROVING AN AGREEMENT WITH
MCGUIRE MANAGEMENT CONSULTANCY
FOR TRANSIT ASSISTANCE

WHEREAS, the adopted budget provides a budget appropriation for transit assistance; and

WHEREAS, said transit assistance was to take the form of either a full time permanent staff person or contract services; and

WHEREAS, at least initially, contract services may be the most effective and less costly method of acquiring said transit assistance; and

WHEREAS, the City has identified a transit professional, Philip McGuire (dba McGuire Management Consultancy), who has the expertise and qualifications to provide transit assistance; and

WHEREAS, the City wished to retain the services of Philip McGuire and he desires to perform said services for the City.

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles that the transit assistance agreement attached herewith as Exhibit "A" is approved; and that the Director of Administrative Services is authorized to execute the Agreement.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 15th day of August 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 15th day August, 2006, by and between the CITY OF PASO ROBLES, California (hereinafter referred to as "CITY"), and Philip McGuire, dba McGuire Transit Consultancy (hereinafter referred to as "CONSULTANT").

WHEREAS, CITY desires to retain a qualified individual, firm or business entity to assist in the implementation of the City's Short Range Transit Plan and Marketing Plan (hereinafter referred to as Project); 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. Phillip McGuire 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 transit operational assistance as directed by CITY, including but not limited to assistance with:
 - Final design of mid-day shuttle service
 - Final design of Spring/Niblick express service
 - Implementation of demand response (dial-a-ride) service modifications
 - Implementation of Marketing Plan; i.e. re-branding, distribution of marketing/advertising materials, and change-out bus stop signage

- Generally work with CITY and the CITY's transit contractor, Laidlaw Transit Services, to manage and improve transit services

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 in his performance of all work assigned to CONSULTANT. The City shall provide copies of prior reports and studies as well as transit operating data upon request.

4. COMPENSATION

The CONSULTANT will perform work as may be assigned from time to time by the CITY and receive compensation at the rate of \$120 per hour plus direct expenses at cost. Travel time payment shall be for one-way travel only.

All work performed by CONSULTANT shall be billed to the CITY on a monthly basis and shall be paid by the CITY within thirty (30) days of receipt. Billings shall clearly identify the number of hours of worked, date/time/place the hours were worked and a detailed description of the work performed. Copies of invoices for direct costs shall accompany billings.

5. TIME FOR COMPLETION OF THE WORK

There is no time line for completion of work except as may agreed upon by both parties for task assignments.

6. 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.

7. 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 nor for CITY's use of complete documents if used for other than the project or scope of services contemplated by this Agreement.

8. 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.

9. 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.

10. 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.

11. 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: Philip McGuire
McGuire Management Consultancy
848 S. Regatta Drive
Vallejo, CA 94591
(707) 558-9042
(707) 557-6704 FAX
consultpbm@aol.com

12. 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.

13. 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.

14. 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.

15. 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”.

16. 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.

17. 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.

18. 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.

19. 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.

19. 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.

McGuire Management Consultancy

CITY OF PASO ROBLES

By _____

By _____

-----Original Message-----

From: CONSULTPBM@aol.com [mailto:CONSULTPBM@aol.com]

Sent: Sunday, July 30, 2006 10:55 PM

To: Mike Compton

Subject: Preliminary Information

Mike:

This is some preliminary information regarding my services that will begin the process of putting an agreement together. I mentioned in my previous email that I specialize in this sort of work. I am enclosing a fairly recent bio piece to give you more background on myself and my work. I am presently under contract to manage the paratransit service in Snohomish County, Washington, north of Seattle. That engagement is part time and will be winding down by about the end of September. In the meantime, I am available on a part time basis to begin, depending upon your schedule.

My consulting rate is \$120 per hour. I charge expenses at cost supported by receipts as appropriate. I charge only one way for travel. I am quite used to working on this basis and my clients have found this to be a very fair billing approach.

My recent work similar to yours includes the following:

South County Transit, Galt, CA: I implemented their new fixed route service in 2005 including route design, stop identification, sign design, etc. I interacted heavily with the City of Galt on this project. This was very successful and went into effect on August 1, 2005. I worked with Selena Barlow on the marketing of this operation.

City of Elk Grove, CA: I guided the implementation of the City's new transit system. This included everything from bus acquisition to stop identification to marketing program oversight. Selena Barlow also worked on this project at my request. This too was very successful.

I will call you in the next couple of days (I have jury duty on Monday) and discuss the nature of the project, time requirements, etc., before preparing a final proposal. But I look forward to working with you on this project. Thank you again for your interest in my services.

Phil

McGuire Management Consultancy

848 South Regatta Drive

Vallejo, CA 94591

Office: 707-558-9042

Fax: 707-557-6704

consultpbm@aol.com

Philip McGuire

**848 South Regatta Drive
Vallejo, California 94591
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McGuire Management Consultancy

2003-Present

Philip McGuire reintroduced McGuire Management Consultancy in 2003 after serving for 2 years as Regional Vice President for Coach USA Transit Services (see next section). Since returning to transit management consulting, Mr. McGuire has completed several major transit planning and implementation projects. These have further refined an already extensive transit and paratransit career. The first major project was the implementation of the City of Elk Grove transit system, e-tran. Mr. McGuire was retained by the City to implement all aspects of the project including vehicle purchase, marketing, planning oversight, system design, budgeting, and system connectivity. The new transit system was launched on January 2, 2005.

This engagement was divided into 2 parts. The first was management of the procurement process for selection of a transit contracting vendor for the City's new transit system. This was successfully completed and moved the City toward implementation of its new transit system. The second, and much more significant assignment, was to manage the entire startup of the new system after the sudden departure of the Transit Manager. This engagement involved the management of vehicle manufacture, marketing program implementation, short-range transit plan preparation, regional service coordination, public information, budgeting, and other aspects of service introduction. This successfully culminated in the introduction of new service in the City on January 2, 2005. Ongoing activities for the City include orientation of the new Transit Manager, advice on regional collaborative strategies, and service improvement assistance.

Most recently, Mr. McGuire implemented the redesign of transit service in South Sacramento County. This combination urban/rural system had not been restructured since 1997. McGuire personally created the system plan, developed the budget, designed the service, oversaw the marketing program, and worked with the various jurisdictions to guide a smooth implementation. The new service started on August 1, 2005. Early indications are that farebox revenue has increased over 35% from the previous configuration. This was a major short range plan implementation project.

Temporary management assignments included serving as Interim CEO of the Community Transportation Agency in Galt, California. This engagement, lasting several months, included all management responsibilities for the organization from operating decisions to financial performance. During his temporary assignment, Mr. McGuire restructured the maintenance function, returned the organization to profitability, and enlisted community support for major service revisions.

Coach USA Transit Service**October 2001-August 2003**

Mr. McGuire served as Regional Vice President of Coach USA Transit Services managing the company's operations from Illinois to California. A total of 9 operating sites were located in this region ranging in size from 12 vehicles to 150 transit buses including articulated coaches. The region was very profitable and grew in sales volume by nearly 100% under McGuire's leadership. With McGuire's input, Coach USA established itself as a unique company in the transit contracting industry. The company gained a reputation for superior customer service and responsiveness to client needs. The company's acquisition by First Transit resulted in a complete reorientation of the business and resulted in McGuire's decision to leave the organization.

McGuire Management Consultancy**1994-2001**

Mr. McGuire established McGuire Management Consultancy in 1994 serving a broad range of clients from transit agencies to private companies. A significant emphasis in the consulting practice was nonprofit clients. McGuire provided a number of major services to the range of clients including managing both sides of the procurement process. This meant serving some clients who were soliciting transit or other vendors. Other clients were organizations that were pursuing business opportunities in the transit industry and needed professional assistance in proposal development, budgeting, management recruiting, or organization restructuring.

Mr. McGuire's clients included AC Transit in Oakland, CA, where a major paratransit structural review was conducted; Hopelink in Bellevue, WA, where a number of projects were completed including several business development ventures; Red Cross of San Diego, CA, where both organization structure analysis and business development projects were undertaken; Senior Services of Snohomish County, WA, where major organizational work was done along with business development projects.

DAVE Transportation Services**1991-1994**

Mr. McGuire served as Regional Vice President for DAVE Transportation, an industry leading company in the transit contracting business. He managed a region extending from central California north through Oregon, Washington, and Utah. Within that region were 18 operating locations. Mr. McGuire distinguished himself as a creative leader bringing a number of management innovations to the organization. These included new budgeting techniques and cost analysis procedures. Among his most significant contributions to the company was the mentoring of a number of managers who have gone on to significant positions in the transit industry.

The Northern Region of DAVE included 18 operating bases providing both fixed route and paratransit services. During this period, McGuire was a speaker on several State and national panels on such subjects as budgeting and service development.

Laidlaw Transit Services**1984-1991**

Mr. McGuire started with Laidlaw (originally ARA Services) as the manager of a transit operation in Livermore, CA. This assignment included all aspects of fixed route operations including service design and deployment, maintenance management, and personnel development. McGuire was promoted to a larger operating location in Sonoma County, CA and was responsible for all management activities in that site. He distinguished himself in these assignments and was named Laidlaw's National Marketing Director. In this position he was responsible for developing the company's transit contracting practice and business volume. Successful projects included the award of the BART Express Bus contract in Oakland, CA, and the largest fixed route transit contract in Denver, CO. In this capacity, McGuire represented Laidlaw in a number of national forums including APTA, and several State organizations.

Private Business Ventures**1981-1984**

Mr. McGuire was engaged in several non-transit business ventures during this period that contributed greatly to his business skills and managerial capability.

Paratransit Inc., Sacramento, CA**1978-1981**

Philip McGuire was the Founder and Executive Director of this nationally renowned nonprofit paratransit operating agency. This organization was one of the first single purpose paratransit organizations in the nation. It specialized in creative coordination arrangements with other local operating agencies. Among its greatest early achievements was the establishment of a maintenance program for its own fleet as well as those of other social service transportation operators in the Sacramento area.

Paratransit Inc. was always a leader in the deployment of state-of-the-art technology and management systems that contributed greatly to the efficiency and overall success of the organization and its collaborating partners. McGuire handled all aspects of the creation of the organization including vehicle procurement, facility selection and development, staff selection and training, finance, and legislative involvement. McGuire has consulted for Paratransit Inc. on a number of assignments since leaving. The Agency has come to be recognized as one of the most innovative models for service delivery in the US.

Sacramento Regional Transit District**1974-1978**

Mr. McGuire served as Assistant Director of Planning and Marketing for RT. In this capacity, he led development of the organization's first formal marketing program, guided creation of its first service for the disabled, and served as a key advisor for the General Manager.

Sacramento Area Council of Governments**1973-1974**

Mr. McGuire joined SACOG (formerly SRAPC) as a transit planner and was instrumental in the development of the first long-range transit plan for the Sacramento Regional Transit District.

Education

Mr. McGuire holds a Bachelor's Degree in Sociology and a Master's Degree in Urban and Regional Planning from the University of Iowa. He was awarded a certificate in Urban Transportation Planning from the Institute of Urban and Regional Research at the University of Iowa. He has gone on to complete many graduate courses in accounting, finance, labor law, and marketing.

The members of the California Association for Coordinated Transportation (CalACT) have elected him to the Board of Directors for 3 consecutive terms and he has served as the Association's Treasurer for the entire 6-year period.