

TO: James L. App, City Manager
FROM: Jim Throop, Director of Administrative Services
SUBJECT: State Mandated Cost Claiming Services
DATE: September 6, 2011

Needs: For the City Council to consider adoption of a resolution approving an agreement with AK & Company for state mandated cost claiming services.

Facts:

1. Senate Bill 90, adopted many years ago provided that public agencies shall be reimbursed for costs associated with compliance with legislation enacted by the legislature.
2. The City has filed annual reimbursement claims, prepared by a third party expert, for many years.
3. The City has utilized Anita Worlow of AK & Company since 2005. Prior to establishing AK & Company, Ms. Worlow prepared City claims when she was with Maximus.
4. The cost proposal from AK & Company for FY 2012 is \$5,900 for all annual and amended claims services and \$1,750 for new claims (if any). The total contract costs for last FY 2011 for all annual, amended and new claims was \$6,850.

Analysis & Conclusion:

The City has received a proposal from AK & Company to provide mandated cost reimbursement services. AK & Company was established in 2005, based in Sacramento, and is owned and operated by Anita Worlow. Ms. Worlow has prepared timely submissions of local government mandated cost reimbursement claims for the past 13 years. Additional local government experience included employment as a contract lobbyist representing City and County interest, Controller for the CSAC Excess Insurance Authority, and Legislative Analyst with the California State Association of Counties.

The cost to prepare the claims is considerably exceeded by the reimbursement revenues received from the State for mandated costs. Many of the mandates are complicated and would require considerable staff time to prepare without using outside expertise.

Policy

Reference:

SB 90 State Mandated Cost Reimbursements.

Fiscal

Impact:

The Administrative Services has sufficient appropriations available to pay for these services. Historically costs and revenues received are noted follows:

	Total Contract Costs	Total Claim Revenues	Net General Fund Revenue
Fiscal Year 2011	\$ 6,850	\$ 14,869	\$ 8,019
Fiscal Year 2010	6,400	9,172	2,772
Fiscal Year 2009	4,250	9,697	5,447
Fiscal Year 2008	5,300	42,772	37,472
Fiscal Year 2007	4,800	118,430	113,630
Fiscal Year 2006	6,500	38,285	31,785
Fiscal Year 2005	7,213	26,640	19,428
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	85,382
Fiscal Year 2000	6,500	73,422	66,922
Prior Eight Yrs.	28,814	173,576	144,762

The net revenues illustrated above for fiscal years 2007 represent "catch up" payments that were deferred from prior years.

The cost proposed by AK & Company to provide mandated cost reimbursement services is \$5,900 for current claims, and any amended claims if necessary.

Options:

- a. That the Council adopt Resolution No. 11-xx 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 the above option.

RESOLUTION NO. 11-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 claims; and

WHEREAS, Anita Worlow, of AK & Company, has been performing said claiming services on the behalf of the City for many years; and

WHEREAS, the fee paid for providing this service to the City of Paso Robles is recoverable as a State mandated cost.

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles that the contract attached herewith as Exhibit "1" 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 Paso Robles this 6th day of September, 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Duane Picanco, Mayor

Caryn Jackson, Deputy City Clerk

**AGREEMENT FOR PROVISION OF
PROFESSIONAL CONSULTING SERVICES TO THE
CITY OF PASO ROBLES**

This AGREEMENT is entered into on the 7th day of September, 2011, both by and between ak & company ("Consultant" for the purposes of this Agreement) and the City of Paso Robles ("City" for the purposes of this Agreement).

PURPOSE:

Article XIII B of the State of California's Constitution allows local agencies to recover costs associated with provision of certain activities that have been mandated by the State. City has determined that provision of the Consultant's services to prepare and file mandated cost reimbursement ("SB 90" for the purposes of this Agreement) claims is the most cost effective and economical method to complete this process. Consultant has knowledge and experience in completion of the data collection, preparation and submission of SB 90 claims to the State of California. City agrees that Consultant will assist City in the preparation, submission and negotiations involving these state mandated programs.

City and Consultant mutually agree to the following terms and conditions:

- 1) Consultant's Services. Consultant will perform in a professional manner the following services:
 - a) Based upon City's timely provision of accurate and complete information, by February 15, 2012, prepare and submit SB 90 Annual Claims to the State Controller's Office, according to the State Controller's 2011 Annual Claiming Instructions.
 - b) Based upon City's timely provision of accurate and complete information, by February 14, 2012, prepare and submit SB 90 Amended or Late Claims to the State Controller's Office, if necessary.
 - c) Based upon written instruction from City and based upon City's timely provision of accurate and complete information, prepare and submit SB 90 New Claims according to Claiming Instructions issued during the 2011-2012 fiscal year. New Claims are those with a claim due date other than February 15, 2012, that have not been previously reimbursable.

Consultant shall determine the method, details and means of preparing and filing SB 90 claims and agrees to perform the specific services listed in Exhibit "A", for each category of claim.

- 2) City's Duties. City's duties under this Agreement are to cooperate with Consultant in the performance of this Agreement and perform the specific services listed in Exhibit "B", within the timeframes specified.
- 3) Exhibits. Exhibits "A" and "B" are attached and incorporated as part of this Agreement.

- 4) Term of Agreement. This Agreement shall become effective immediately upon signing and continue in effect through September 30, 2012. This Agreement may be extended by mutual consent of the parties for two consecutive periods.
- 5) Staff. "Consultant" includes all staff required to complete performance of this Agreement's services. Services included in this Agreement will be completed by Consultant or under Consultant's supervision.
- 6) Costs of Agreement and Method of Compensation – Annual, Amended and Late Claims. In exchange for Consultant's provision of the services in Items 1) a) and 1) b), City agrees to compensate Consultant in a Fixed Fee in the amount of five thousand nine hundred dollars (\$5900). This fee will be paid in two equal installments: Fifty percent (50%) or \$2950 will be due and payable within 30 days of City's receipt of invoice following execution of the Agreement and fifty percent (50%) or \$2950 will be due and payable within 30 days of City's receipt of invoice in following filing of Annual Claims. Any penalties incurred in Item 8) will be invoiced at this time.
- 7) Costs of Agreement and Method of Compensation – New Claims. In exchange for Consultant's provision of the services in Item 1) c), City agrees to compensate Consultant based on each New Claim Program. For each New Claim Program, compensation will consist of a Flat Fee in the amount of one thousand seven hundred fifty dollars (\$1,750) for up to three New Claim Program back year claim filings, and an additional \$150 for each additional back year program claim filing.
- 8) City's Provision of Staff and Data. City agrees to designate a responsible staff member as its SB 90 Coordinator. Consultant will inform designated City staff of the necessary data for timely claims submission. Consultant will presume that all data provided by City is correct and complete. City agrees to be fully responsible for the accuracy and timeliness of the data provided. City agrees there will be no Consultant liability for unfiled or late 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. Consultant agrees to a one week grace period at no charge to City for untimely submission of data. City agrees to pay Consultant an additional fee of \$150 per week or portion thereof for data received by Consultant after the end of the grace period.

All Annual Claims data requested must be provided no later than **FRIDAY, NOVEMBER 11, 2011**.

For any New Claim, the City and Consultant agree that the Consultant will receive written direction from the City prior to beginning the data collection and claim preparation process. City will provide such notification to Consultant within **one week** of the Consultant's initial notification of each New Claim.

- 9) Third Party Obligations. The only parties to this Agreement and entitled to enforce the terms of the Agreement are City and Consultant. No right or benefit, direct or indirect, is given to any third parties.
- 10) Records and Inspections. In accordance with State law, Consultant will maintain complete, accurate records concerning all matters covered under this Agreement. During normal business hours, City will have reasonable access to these records. A thirty (30) day written notice will be provided by City when it intends to inspect or audit these records. Prior to being granted such access, any City employee, consultant, subcontractor or agent will execute a non-disclosure agreement.
- 11) Waiver of Submission of Claims. Submission of claims pursuant to Items 1) a), 1) b), and 1) c) of this Agreement may be waived. If a waiver is exercised by either party, Consultant will be paid by 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 Items 6) or 7). In case of a waiver, Consultant will be paid based on the amount of time required to submit the claims that were completed prior to the effective date of the waiver. This time will be reimbursed at the rate of \$150 an hour, not to exceed the dollar amount in Items 6) or 7).
- a) At Option of City. Pursuant to a specific State claiming instruction, at City's discretion, City may instruct Consultant not to file a specific claim or claims. This instruction must be in writing and provided to Consultant at least thirty (30) days prior to the due date of the claim. The date Consultant receives City's written instruction will be the effective date of City's waiver.
- b) At Option of Consultant. At Consultant's discretion, Consultant may advise City of the reasons it does not intend to file a specific claim. The date Consultant mails its notification to City will be the effective date of Consultant's waiver. City will expect Consultant to file any pertinent claim that meets the minimum limit set by the State.
- 12) No Waiver of Rights and Remedies. In no event will any City payment to Consultant constitute a waiver by City of any breach of covenant or any default that may exist on the part of Consultant. Payment made by City while any such breach or default does not impair or prejudice any City right or remedy in respect to such breach or default.
- 13) Consultant Audit Liability. Consultant will presume that all statistical and financial data provided by City is correct and complete. Consultant will provide workpapers and records to State Controller's Office (SCO) auditors if an audit should occur. Any State disallowance of amounts paid to City under the claim or claims for whatever reason will be solely City's responsibility. If City so requests, Consultant will assist City in defending claims at the desk audit level, provided such a disallowance amounts to at least ten percent (10%). No contest by Consultant for reductions of less than 10 percent (10%) will be made. Incorrect Reduction Claims preparation is not included in any part of this Agreement. If travel is required, Consultant is to be reimbursed for travel expenses and mileage at the City's rate in effect at the time of the travel.

- 14) Independent Contractor. In performing the scope of services of this Agreement, City and Consultant agree that Consultant is an independent contractor with complete control of the work and manner in which it is performed. For no purposes are the Consultant or Consultant's employees considered agents or employees of the City.
- 15) Insurance. General liability, automobile and professional liability insurances will be maintained by Consultant.
- 16) Limitation of Liability. Consultant will not be liable for consequential, special, indirect, or punitive damages. For any reason whatsoever, foreseeable or not, will Consultant's liability exceed the total amount paid to Consultant under this Agreement.
- 17) Changes. If either City or Consultant requires changes in the scope of services included in this Agreement, they must be mutually agreed upon by and between City and Consultant. Any changes will be included in a written and duly executed amendment to this Agreement.
- 18) Notices. Under this Agreement, any signatures, reports, bills or notices required will be adequate if sent by either City or Consultant via postage paid USPS mail to the address noted below:

Contact Name: James Throop **Title:** Director of Administrative Services

Address: 821 Pine Street, Suite A, Paso Robles, CA 93446

Phone #: 805-237-3999 **Fax #:** 805-237-6565

Email Address: jthroop@prcity.com

ak & company
3531 Kersey Lane, Suite M
Sacramento, CA 95864

Phone #: 916 972 1666
Fax #: 916 972 1666
email: akcompany@um.att.com

Any notices will be considered delivered after five (5) days of being deposited in a USPS mailbox.

- 19) Complete Agreement. City and Consultant agree that this Agreement and any subsequent documents incorporated by specific reference contain all the terms and conditions previously agreed upon. No other agreements regarding this Agreement will bind either City or Consultant in any way.
- 20) Severability. If any portion, section, provision, part, or term of this Agreement are found to be in conflict with either a law of the United States of America or the State of California, or otherwise be unenforceable, the remaining portions, sections, provisions, parts or terms will be deemed severable and shall remain in full force and effect.

- 21) Receipt of Agreement. Consultant must receive a signed copy of this Agreement by **FRIDAY, AUGUST 6, 2011** to ensure that the data collection process can proceed in order to warrant that Annual Claims will be submitted in a timely fashion.
- 22) Signature Authority. The individual(s) signing this Agreement certify to the following:
 - a) He or she is authorized to sign this Agreement on behalf of City;
 - b) City has all approvals necessary to enter into this Agreement;
 - c) This Agreement is a valid, enforceable obligation of City upon execution.

THEREFORE, The City and the Consultant execute this Agreement as of the date below.

City of Paso Robles

ak & company

By: _____
(City Official)

By: _____
Anita Kerezsi Worlow, Principal

Title: Director of Administrative Services

Date: _____

Date: September 7, 2011

Taxpayer I.D. Number: 20-3180401

ATTEST:

By: _____
(City Official)

Title: _____

Date: _____

EXHIBIT "A"
SERVICES TO BE PERFORMED BY CONSULTANT

Annual, Amended or Late Claims - Consultant will perform in a professional manner the following services:

- a. By February 15, 2012, prepare and submit SB 90 Annual Claims to the State Controller's Office, according to the State Controller's 2011 Annual Claiming Instructions, as specified in 1) (a).
- b. Prepare and submit amended or late SB 90 claims, as necessary, to the State Controller's Office, as specified in 1) (b).
- c. Schedule at least one site visit per year to discuss eligible programs with City's SB 90 Coordinator, and conduct meetings with individual departments affected by each reimbursable mandate program.
- d. Advise City of State Controller's Office issues associated with any SB 90 claims prepared and submitted by Consultant.
- e. Advise City staff regarding reliable and defensible types of source documentation
- f. Include both direct and indirect costs in SB 90 claims submitted by Consultant. Consultant may choose to use either the State Controller's Office ten percent (10%) indirect cost rate or to calculate a higher rate.
- g. If necessary City financial records are available and delivered to Consultant in a timely manner, Consultant will collect relevant salary and expenditure data to prepare an Indirect Cost Rate Proposal (ICRP) for all City departments included in City's claims. If not provided in a timely manner, Consultant will use the SCO 10%.
- h. Complete all eligible claims and provide City with hard copies of the claims submitted.
- i. Deliver all signed claims to the State Controller's Office.
- j. Forward to City a copy of the Claims Transmittal signed by the State Controller's Office and acknowledging receipt of claims.
- k. If necessary, act as liaison with the State Controller's Office in Sacramento desk reviews.

EXHIBIT "A"
SERVICES TO BE PERFORMED BY CONSULTANT

New Claims – Upon written direction from City, Consultant will perform in a professional manner the following services:

- a. Prepare and submit SB 90 New Claims to the State Controller's Office, according to the State Controller's Office issuance of New Claiming Instructions, as specified in 1) (c).
- b. Advise City staff regarding reliable and defensible types of source documentation.
- c. Include both direct and indirect costs in SB 90 claims submitted by Consultant. Consultant may choose to use either the State Controller's Office ten percent (10%) indirect cost rate or to calculate a higher rate.
- d. If necessary City financial records are available and delivered to Consultant in a timely manner, Consultant will collect relevant salary and expenditure data to prepare an Indirect Cost Rate Proposal (ICRP) for all City departments included in City's claims. If not provided in a timely manner, Consultant will use the SCO 10%.
- e. Complete all eligible claims and provide City with hard copies of the claims submitted.
- f. Deliver all signed claims to the State Controller's Office.
- g. Forward to City a copy of the Claims Transmittal signed by the State Controller's Office and acknowledging receipt of claims.

EXHIBIT "B"
CITY'S DUTIES

City's duties in performance of this Agreement:

- a. Return executed Agreement by Friday, August 6, 2011.
- b. Coordinate all site visits, activities and work with Consultant to collect and obtain necessary records, data and documentation needed by Consultant to prepare and submit SB 90 claims to the State Controller's Office by the required deadlines.
- c. Provide Consultant-requested data 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.
- d. Annual Claims complete data not provided by Friday, November 11, 2011 will be considered late.
- e. For any New Claim Program, provide written direction to Consultant prior to Consultant beginning the data collection and claim preparation process. City will provide such direction to Consultant within three weeks of Consultant's initial notification of each New Claim Program, upon City determination that any New Claim Program filing will provide sufficient City reimbursement.
- f. Respond to Consultant inquiries within a reasonable timeframe.
- g. Ensure Consultant is paid within 30 days following City's receipt of an original invoice and acceptance by City of the materials, supplies and services provided by Consultant.