

TO: James L. App, City Manager
FROM: Jim Throop, Director of Administrative Services
SUBJECT: State Mandated Cost Claiming Services
DATE: July 1, 2014

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 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 for many years.
3. The City has utilized Anita Worlow of AK & Company since 2005 to file claims. Prior to establishing AK & Company, Ms. Worlow prepared City claims when she was with Maximus.
4. The cost proposal from AK & Company for said services for FY 2015 is \$5,000. The total contract costs for FY 2014 for was \$5,900.
5. Current outstanding claims amount is approximately \$512,000.
6. State has again delayed payments for all non-law enforcement programs. These payments will remain outstanding until such a time that the State makes an appropriation in their budget.

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 15 years.

The cost to prepare the claims is less than the reimbursement revenues received from the State. 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
FY 2014	\$ 5,900	\$ 9,000	\$ 3,100
FY 2013	5,900	5,364	(536)
FY 2012	6,850	7,811	961
FY 2011	6,850	14,869	8,019
FY 2010	6,400	9,172	2,772
FY 2009	4,250	9,697	5,447
FY 2008	5,300	42,772	37,472
FY 2007	4,800	118,430	113,630
FY 2006	6,500	38,285	31,785
FY 2005	<u>7,213</u>	<u>26,640</u>	<u>19,428</u>
Total	<u>59,963</u>	<u>282,040</u>	<u>222,077</u>

For fiscal year 2014, the City has \$512,000 in outstanding claims with the State. There is no clear answer on when the State proposes to pay off the existing claims. Proposition 42, recently passed by voters, will cause some of these mandates to no longer be 'claimable' to the State. Posting of Brown Act documents is one example of a cost that will no longer be eligible for claims.

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 \$5,000 for current claims, and any amended claims if necessary. This is a reduction in fees of almost \$1,000 from prior year.

Options:

- a. That the Council adopt Resolution No. 14-xx authorizing the Director of Administrative Services to engage the services of AK & Company to provide mandated cost claiming services on the behalf of the City; or
- b. Amend, modify, or reject the above option.

RESOLUTION NO. 14-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 1st day of July, 2014 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Duane Picanco, Mayor

ATTEST:

Caryn Jackson, Deputy City Clerk

EXHIBIT 1

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

This AGREEMENT is entered into on the _____ day of _____, 2014, 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 XIIB 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 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 efficient 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 and submission of reimbursement claims involving these state mandated programs.

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

- 1) Consultant's Professional Services. Consultant will perform the following services:
 - a) Based upon City's timely provision of accurate and complete information, by February 17, 2015, prepare and submit FY 2013-14 SB 90 Annual Claims to the State Controller's Office (SCO), according to the SCO FY 2013-14 Annual Claiming Instructions.
 - b) Based upon City's timely provision of accurate and complete information, by February 17, 2015, if necessary, prepare and submit SB 90 Amended Claims to the State Controller's Office.
 - c) Based upon written instruction from City and City's timely provision of accurate and complete program information, prepare and submit SB 90 New Claims according to Claiming Instructions issued during FY 2014-2015. New Claims are those with a claim due date other than February 17, 2015.
 - d) Provide SCO and legislative SB 90 updates relevant to the City throughout the fiscal year.
 - e) Provide an Annual SCO Outstanding Claims Report.

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, 2015. This Agreement may be extended by mutual written consent of the parties for two consecutive one-year 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 and Amended Claims. In exchange for Consultant's provision of the services in Items 1) a), 1) b), 1) d), and 1 e), City agrees to compensate Consultant in a Fixed Fee in the amount of three thousand five hundred dollars (\$3500). This fee will be paid in two equal installments: Fifty percent (50%) or \$1750 will be due and payable within 30 days of City's receipt of invoice following execution of the Agreement and fifty percent (50%) or \$1750 will be due and payable within 30 days of City's receipt of invoice 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 in a Fixed Fee in the amount of one thousand five hundred dollars (\$1500). This fee will be paid will be due and payable within 30 days of City's receipt of invoice following filing of final New Claims.
- 8) City's Provision of Staff and Data. City agrees to designate a responsible staff member as its SB 90 Coordinator. Consultant will inform City's designated SB 90 Coordinator and department staff of the data and documentation necessary 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 by the agreed upon deadlines.

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. City agrees to pay Consultant an additional fee of \$350 per week or portion thereof for data received by Consultant after the agreed upon deadline.

All Annual Claims data requested must be provided to ak & company no later than **FRIDAY, NOVEMBER 7, 2014.**
- 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 hours of work 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).

 - 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. Preparation of Incorrect Reduction Claims 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: _____ **Title:** _____

Agency: _____

Address: _____

Phone #: _____ **Fax #:** _____

Email Address: _____

ak & company	Phone #:	916 972 1666
3531 Kersey Lane, Suite M	email:	akcompany@um.att.com
Sacramento, CA 95864	Fax #:	916 972 1666

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, JULY 18, 2014** 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: City of Paso Robles

Consultant: ak & company

By: _____
(City Official)

By:  _____
Anita Kerezsi

Title: _____

Title: Principal

Date: _____

Date: 6/11/14

Taxpayer I.D. Number: 20-3180401

EXHIBIT A**SERVICES TO BE PERFORMED BY CONSULTANT**

Annual and Amended Claims - Consultant will perform the following professional services:

- a. By February 17, 2015, prepare and submit FY 2013-14 SB 90 Annual Claims to the State Controller's Office (SCO), according to the SCO FY 2013-14 Annual Claiming Instructions, as specified in 1) (a).
- b. Prepare and submit amended SB 90 claims, as necessary, to the State Controller's Office (SCO), as specified in 1) (b).
- c. Schedule a fall site visit 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 staff regarding reliable and defensible types of source documentation.
- e. Establish a workable timeframe and plan for data to be collected by staff and submitted to Consultant in order to submit the City's claims prior to the SCO deadlines.
- f. Include both direct and indirect costs in SB 90 claims submitted by Consultant. Consultant may choose to use either the SCO ten percent (10%) indirect cost rate or to calculate a higher rate.
- g. Provided that City financial records are available and delivered to Consultant in a timely manner, Consultant will use 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 SCO by specified deadlines.
- j. Provide to City a copy of the Claims Transmittal signed by the SCO to acknowledge receipt of claims.
- k. Advise City of SCO issues associated with any SB 90 claims prepared and submitted by Consultant.
- l. If necessary, act as a Sacramento liaison with the SCO in desk reviews or field audits for claims that were prepared and submitted by Consultant.
- m. Provide to City relevant SCO and legislative updates throughout the fiscal year, as specified in 1) d).
- n. Provide to City an Annual SCO Outstanding Claims Report, as specified in 1) e).

EXHIBIT A (continued)

SERVICES TO BE PERFORMED BY CONSULTANT

New Claims – Consultant will perform the following professional services:

- a. Prepare and submit SB 90 New Claims to the State Controller's Office (SCO), according to the SCO issuance of New Claiming Instructions, as specified in 1) (c).
- b. Advise City staff regarding reliable and defensible types of source documentation.
- c. Establish a workable timeframe and plan for data to be collected by staff and submitted to Consultant in order to submit the claims prior to the SCO deadlines.
- d. Include both direct and indirect costs in SB 90 claims submitted by Consultant. Consultant may choose to use either the SCO ten percent (10%) indirect cost rate or to calculate a higher rate.
- e. Provided that 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%.
- f. Complete all eligible claims and provide City with hard copies of the claims submitted.
- g. Deliver all signed claims to the SCO by each new claim deadline.
- h. Provide to City a copy of the Claims Transmittal signed by the SCO to acknowledge receipt of claims.

EXHIBIT B
CITY'S DUTIES

City's duties in performance of this Agreement:

- a. Return executed Agreement by Friday, July 18, 2014.
- b. Coordinate all site visits, monitor staff 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 (SCO) by the required deadlines.
- c. Provide to Consultant all necessary 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. Ensure that Annual Claims data is provided in its entirety to Consultant no later than Friday, November 7, 2014.
- e. Return signed FAM-27 signature pages no later than five (5) working days before any filing deadline.
- f. Respond to Consultant inquiries regarding data collection 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.