



MEETING DATE: 6/2/08

ITEM NO:

5

COUNCIL AGENDA REPORT

DATE: MAY 13, 2008
TO: MAYOR AND TOWN COUNCIL
FROM: GREG LARSON, TOWN MANAGER

SUBJECT: PPW JOB NO. A08-005 - GEOLOGY AND GEOTECHNICAL PEER REVIEW CONSULTANT SERVICES
ADOPT RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE PROFESSIONAL CONSULTANT SERVICES AGREEMENT WITH GEOMATRIX CONSULTANTS, INC. FOR A TWO YEAR PERIOD TO PERFORM GEOLOGY AND GEOTECHNICAL PEER REVIEW FOR PRIVATE DEVELOPMENT PROJECTS

RECOMMENDATION:

Adopt resolution (Attachment 1) authorizing the Town Manager to execute a professional consultant services agreement (Attachment 2) with Geomatrix Consultants, Inc. for a two year period to perform Geology and Geotechnical Peer Review for private development projects.

BACKGROUND:

The Town of Los Gatos has been using consultants to assist the Town in review of environmental, architectural, geology, and arborist issues related to private development projects. These consultant contracts are reviewed each year by the appropriate Town department and staff to insure that we are satisfied with the services provided and that Town residents receive quality service.

The consulting firm of Geomatrix Consultants, Inc. has been providing geology and geotechnical peer review since 2002. Three amendments to their agreement were approved by the Town Council. Geomatrix's current agreement will expire on June 30, 2008.

PREPARED BY: KEVIN ROHANI
Interim Director of Parks and Public Works

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Reviewed by: PSJ Assistant Town Manager AL Town Attorney
____ Clerk Administrator se Finance ____ Community Development

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MAYOR AND TOWN COUNCIL

SUBJECT: PPW JOB NO. A08-005 - GEOLOGY AND GEOTECHNICAL PEER
REVIEW CONSULTANT SERVICES

MAY 13, 2008

The Town policy requires that every five years ongoing consultant contracts are evaluated to ensure that the Town is receiving the best service from our contractors. Staff prepared a Request for Proposals for Geology and Geotechnical Peer Review service and it was advertised in newspapers per Town requirements.

In response to this Request for Proposal, the Town received one proposal from Geomatrix Consultants, Inc. Town staff from the Parks and Public Works Department and Community Development Department met with Geomatrix Consultants, Inc., are satisfied with the service this firm provides, and recommends that the contract with this firm be renewed by the Town.

CONCLUSION:

It is recommended that the Council adopt the attached Resolution authorizing the Town Manager to execute a Professional Services Agreement with Geomatrix Consultants, Inc. for geology and geotechnical peer review for private development projects.

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to Sections 15301©), 15303(e) and 15304(b) of the State CEQA guidelines.

FISCAL IMPACT:

The funding for the agreements for the geology and geotechnical peer review is provided by the deposit that the Town collects from project applicants.

Attachments:

1. Resolutions approving Professional Services Agreement with Geomatrix Consultants, Inc.
2. Agreement with Geomatrix Consultants, Inc. (with Exhibit A – Scope of Work) and (Exhibit B - Schedule of Charges)

RESOLUTION

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
APPROVING AN AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
WITH GEOMATRIX CONSULTANTS, INC.
FOR GEOLOGY AND GEOTECHNICAL PEER REVIEW FOR
PRIVATE DEVELOPMENT PROJECTS**

WHEREAS, it is necessary for the Council to secure professional consultant services to provide assistance to the Town in the implementation of tasks related to the geology and geotechnical peer review for private development projects; and

WHEREAS, the Town Council has selected the firm of Geomatrix Consultants Inc. to provide professional services in connection with the geology and geotechnical peer review for private development projects; and

NOW, THEREFORE, IT IS RESOLVED that the Town Council of the Town of Los Gatos hereby approves the attached Agreement for Professional Services with Geomatrix Consultants, Inc. to provide professional services in connection with the geology and geotechnical peer review for private development projects for a period of two years; and

BE IT FURTHER RESOLVED that the Town Manager is hereby authorized and directed to execute said agreement on behalf of the Council.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos held on the 2nd day of June, 2008, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

AGREEMENT FOR GEOTECHNICAL CONSULTANT SERVICES

THIS AGREEMENT is entered into this ____ day of _____, 2008, by and between **Town of Los Gatos**, State of California, herein called "Town", and **Geomatrix Consultants, Inc.**, engaged in providing Geology and Geotechnical consulting services herein called "Consultant."

RECITALS

- A. Town is considering undertaking activities to **PROVIDE GEOLOGY AND GEOTECHNICAL SERVICES FOR THE TOWN OF LOS GATOS.**
- B. Town desires to engage a Geotechnical consultant to provide consulting services to review, analyze, and comment on development projects; prepare geotechnical analyses and reports; conduct peer review of outside Geotechnical consultant reports, and staff public meetings because of Consultant's experience and qualifications to perform the desired work.
- C. Consultant represents and affirms that it is qualified and willing to perform the desired work pursuant to this Agreement.

AGREEMENTS

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

- 1. Scope of Services. Consultant shall provide the Geology and Geotechnical review services as requested by the Town.

Administrative Duties

- I. When needed by Town, assess the potential geotechnical impacts associated with proposed development and redevelopment projects. This shall include evaluating geotechnical reports and/or identifying mitigation measures and recommending requirements and conditions of approval. The reviews shall be based on the criteria used by Santa Clara County in their peer review process.
- II. When needed by Town, work on special studies or projects including but not limited to: updating the Town's geologic hazards map, preparation of geologic/geotechnical checklists for application packets, emergency response and coordination, assistance with preparation/revision of hillside design guidelines, preparation of drawings and specifications, monitoring of landslide hazards and litigation support and expert witness testimony.

- III. When needed by Town, conduct field investigations, studies, and prepare reports related to geotechnical hazards and develop recommendations for mitigation measures.
- IV. When needed by Town, assist in the establishment and subsequent modification of Town's geotechnical-related ordinances, design guidelines, policies, and development fees.
- V. When needed by Town, attend meetings with Town staff, public officials, community leaders, developers, contractors and the general public.
- VI. When needed by Town, advise, support and assist Town departments, committees, commissions, and Town Council. In addition, act as a liaison between Town and Federal, State, and Regional agencies.
- VII. When needed by Town, attend Town Council, Planning Commission, and special study session meetings when geotechnical issues and project applications with geotechnical considerations are being considered.
- VIII. As requested by Town, provide copies of draft and final draft work products of reports and studies prepared for Town. Consultant shall provide electronic file copies of these documents as needed.

Other Miscellaneous Services

- IX. Town may occasionally have the need for other services not specifically listed in this document that the consultant has the necessary experience and capabilities to provide. Town or Redevelopment Agency may authorize consultant to perform such selected services on an as-needed basis.
2. Time of Performance. The services of Consultant are for the period of July 1, 2008 to June 30, 2010. The Town will review the consultants performance at the end of the contract period and will have the option of renewing the contract. Should Town not renew a contract, the award and authorization of the contract shall automatically expire. Town shall give Consultant at least 15 days notice, prior to the cancellation or expiration of the contract.
3. Compliance with Laws. Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession.

Consultant represents and warrants to Town that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of Town of Los Gatos.

4. Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
5. Information/Report Handling. All documents furnished to Consultant by Town and all reports and supportive data prepared by Consultant under this Agreement are Town's property and shall be delivered to Town upon the completion of Consultant's services or at Town's written request. All reports, information, data, and exhibits prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by Town to the public, and Consultant shall not make any of the these documents or information available to any individual or organization not employed by consultants by Consultant or Town without the written consent of Town before such release.

Town acknowledges that the reports to be prepared by Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

6. Compensation. Compensation for Consultant's professional services shall be based upon Town authorization for each peer review. Billing for each peer review shall be based on the Consultant's Schedule of Charges, attached hereto as (Exhibit "B") and incorporated by reference herein.

Billing shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Billing invoices submitted for payment must reference Town Purchase Order Number, and if applicable, the appropriate project address and Town Application Number (e.g.). Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days.

Only one (1) purchase order number per invoice will be accepted. All invoices and statements to Town shall reference Town's purchase order number and be addressed as follows:

Invoices: Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655
Los Gatos, CA 95030

Statements: Town of Los Gatos
Attn: Finance Department
P.O. Box 655
Los Gatos, CA 95030

7. Availability of Records. Consultant shall maintain the records supporting this billing for not less than three (3) years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of Town at Consultant's offices during business hours upon written request of Town.
8. Project Manager. The Project Manager for Consultant for the work under this Agreement shall be Bob Wright.
9. Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to Consultant. No portion of these services shall be assigned or subcontracted without the written consent of Town.
10. Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

To Town:
Kevin Rohani
Town Engineer
Parks and Public Works
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030
Phone: (408) 399-5773

To Consultant:
Geomatrix Consultants, Inc.
Bob Wright, PHD
Senior Geotechnical Manager
2101 Webster Street
12th floor
Oakland, CA 94612
Phone: (510) 663-4100

11. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, Consultant may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

12. Conflict of Interest. Consultant understands that its professional responsibilities is solely to Town. Consultant has and shall not obtain any holding or interest within Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of Staff or management of Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest should it discover it has done so and shall, at Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at Town's sole discretion, sever any such employment relationship.
13. Equal Employment Opportunity. Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.
14. Insurance.
 - A. Minimum Scope of Insurance:
 - I. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
 - ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
 - iii. Consultant shall provide to Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by Town before work commences.

- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

B. General Liability:

- i. Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant, premises owned or used by Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. Consultant's insurance coverage shall be primary insurance as respects Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by Town, its officers, officials, employees or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Town, its officers, officials, employees or volunteers.
- iv. Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages: Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with Town Clerk.

D. In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.

15. Indemnification. Consultant shall save, keep and hold harmless indemnify and defend Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of Consultant, or any of Consultant's officers, employees, or agents or any sub-consultant.
16. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
17. Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior or Municipal Court of the County of Santa Clara.
18. Termination of Agreement. Town and Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen (15) days written notice of termination. In the event of termination, Consultant shall deliver to Town all plans, files, documents, reports, performed to date by Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to Town bears to completed services contemplated under this Agreement pursuant to the noted Scope of Services and Exhibit A hereto, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
19. Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by Town and Consultant.
20. Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
21. Entire Agreement. This Agreement, including Exhibits A and B, constitutes the complete and exclusive statement of the Agreement between Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, Town and Consultant have executed this Agreement as of the date indicated on page one (1).

Town of Los Gatos

Geomatrix, Consultants, Inc.

Greg Larson, Town Manager
Town of Los Gatos

Recommended by:

Kevin Rohani
Interim Director of Parks and Public Works

ATTEST:

Clerk Administrator of Town of Los Gatos,
Los Gatos, California

Jackie Rose, Clerk Administrator

Approved as to Form:

Orry P. Korb, Town Attorney

SCOPE OF WORK

Geomatrix will peer review development applications for the Town Engineering and Community Development Departments. Review will focus on the geologic and geotechnical aspects of geology and geotechnical reports, plans, design calculations, and other data necessary for private development within the Town.

Given the location and seismic environment of the Town, the primary geologic, geotechnical and seismic issues to be addressed are: 1) potential for earthquake ground shaking and the secondary effects of; 2) potential for ground surface rupture; 2) potential for seismically-induced landsliding; 3) potential for seismically-induced liquefactions, all mandated for review by the State.

Other significant issues to be addressed during project review include: 1) grading; 2) slope stability; 3) expansive soils and bedrock; 4) erosion and sedimentation; 5) settlement; and 5) the design of foundations, walls, and flatwork.

Peer review will occur early in the planning approval process in order to identify and address potential development constraints. The goal is to protect public health and safety through implementation of the Town Seismic Safety Element of the General Plan, applicable Ordinances of the Town Municipal Code, and through administration of State and local laws, regulations, and policies.



**GEOMATRIX CONSULTANTS, INC.
SCHEDULE OF CHARGES**

Effective January 25, 2008

The Schedule of Charges applies to all services provided by and/or through Geomatrix Consultants. The schedule of charges may be revised periodically, as conditions require.

LABOR:

Labor charges are for technical work, including technical typing, editing, and graphics involved in the preparation of reports and correspondence and for the time associated with production of such documents. Direct charges are not made for secretarial service, office management, accounting, and maintenance, because these items are included in overhead. Labor category charge rates for Geomatrix Consultants, Inc. are listed below. Regional and other factors may influence rates charged for certain individuals. Rates for individuals will be provided on request.

<u>LABOR CATEGORY</u>	<u>HOURLY RATE</u>
Principal	\$210 - 350
Senior Consultant	210 - 350
Senior Decision Analyst	210 - 300
Senior II	190 - 210
Senior I	180
GIS Programmer/Web Designer	140
Project II	136
Project I	126
Field Engineer	115
Staff II	115
Staff I	105
Senior Technician	90
Field Technician	85
CAD/Graphic Designer	93
Project Assistant	73
Technical Editor	88
Support Staff	65

Time spent in travel in the interest of the client will be charged at hourly rates, except that no more than 8 hours of travel time will be charged in any day. When it is necessary for an employee to be away from the office overnight, actual costs, or a negotiated rate, will be charged for living expenses. Employee expenses will be charged at cost plus 15%.

Charges for expert witness services will be at the hourly rates shown. However, for depositions and for court appearances, the rate is twice the amount shown. There will be a 4-hour minimum per-day charge for depositions and an 8-hour minimum per-day charge for court appearances. Special accounting services will be billed at the Support Staff rate.

COMMUNICATIONS CHARGE:

Four percent (4%) of Labor charges for routine photocopying, regular mail postage, and fax/telephone/cellular phone usage.

OUTSIDE SERVICES:

Outside services will be charged at cost plus 15%. Common outside items include: consultants, drilling services, laboratory testing, equipment and vehicle rental, printing and photographic work, postage and shipping, conference calls, travel and transportation.

REIMBURSABLES:

Non-routine Photocopies	\$0.12/sheet
Specialized Computer Applications	\$25.00/hour
Field equipment, vehicles, specialized reproduction	On request

INVOICES:

Invoices will be rendered at least monthly, either as a final or partial billing, and will be payable upon receipt. An additional late payment charge of 1 1/2% per month or the maximum charge allowed by law, whichever is less, will be payable on accounts not paid within 30 days from billing date.

Geomatrix Consultants is an Equal Opportunity/Affirmative Action Employer, and as such adheres to all applicable federal, state, and local laws and regulations in this regard.

EXHIBIT B