



AGENDA REPORT

Meeting Date: January 6, 2015

Item Number: D-11

To: Honorable Mayor & City Council

From: Raj Patel, Assistant Director of Community Development / City Building Official

Subject: APPROVE AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND PCR SERVICES CORPORATION FOR AIR QUALITY (DUST) MONITORING SERVICES FOR THE 9876 WILSHIRE BOULEVARD – BEVERLY HILTON REVITALIZATION – PHASE 3 – WALDORF ASTORIA BUILD-OUT PROJECT; AND
AUTHORIZE A PURCHASE ORDER APPROVAL IN THE AMOUNT OF \$294,000 FOR PROFESSIONAL CONSULTING SERVICES.

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council move to approve an Agreement between the City of Beverly Hills and PCR Services Corporation to provide air quality (dust) monitoring services for the 9876 Wilshire Boulevard – Beverly Hilton Revitalization – Phase 3 - Waldorf Astoria Build-Out Project; and authorize a purchase order approval in the amount of \$294,000 for the contracted services. The total cost of the Agreement is paid for by the developer as required by the project's Conditions of Approval.

INTRODUCTION

Staff recommends that PCR Services Corporation be retained to provide the City with professional air quality (dust) monitoring services for Phase 3 of the 9876 Wilshire Boulevard Hilton Revitalization Project – Waldorf Astoria Build-Out. Environ International Corporation provided dust monitoring services for Phases 1 and 2 of the project. This is a multi- year contract with PCR Services Corporation with the period of performance of January 15, 2015 – January 14, 2017.

DISCUSSION

Staff recommends that the City Council move to approve an Agreement and a purchase order for PCR Services Corporation to perform dust monitoring services for a not-to-exceed amount of \$294,000 for Phase 3 of the Beverly Hilton Revitalization project as selected by the City of Beverly Hills and Beverly Hills Unified School District. Under the Agreement, PCR Services Corporation will provide air quality monitoring services to ensure compliance with the requirements of the "Conditions of Approval" for the 9876 Wilshire Boulevard – Beverly Hilton Revitalization Project.

This request for approval is for the third phase of the Beverly Hilton Revitalization project which is the completion of the Waldorf Astoria structure. The first phase of the project, Demolition was completed in September 2014. Phase two, Shoring and Excavation is currently in progress with anticipated completion by February 2015. Phase three, the Build-Out, construction and completion of the Waldorf Astoria will begin as shoring and excavation is being completed. Environ International has performed dust monitoring services for Phase 1 and will be completing Phase 2. The total not to exceed amount for PCR Services Corporation to complete Phase 3 of the project is \$294,000.

Beverly Hilton Revitalization Project	Duration	Agreement Amount
Phase 1 - Demolition	May 2014 – Sept. 2014	-
Phase 2 – Shoring & Excavation	Sept. 2014 – Feb. 2015	-
Phase 3 – Build-Out of Waldorf Astoria	Jan. 2015 – Jan. 2017	\$294,000
Total Not To Exceed Amount		\$294,000

The Air Quality (Dust) Monitor is retained to monitor and report findings pursuant to the land use approvals for the Beverly Hilton Revitalization Project. The developer shall pay for the Air Quality (Dust) Monitor who shall be hired by and work for the City to monitor air quality during the Beverly Hilton Revitalization Project.

Air quality monitoring includes, among other conditions, reporting and recommending mitigation measures developed as part of the Environmental Impact Report (EIR) as incorporated into the entitlement approval, which are broken down into different phases including start up, demolition, excavation, grading, shoring, and building development throughout the entire construction development process. This contract covers work for Phase 3 of the development.

FISCAL IMPACT

There is no fiscal impact to the City as a result of the approval of this Agreement and Purchase Order. All costs associated with the performance of these professional services will be fully covered by the developers of the 9876 Wilshire Boulevard – Beverly Hilton Revitalization Project.


 Susan Healy Keene

 For Approved By

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND PCR SERVICES CORPORATION FOR AIR QUALITY
(DUST) MONITORING SERVICES FOR THE 9876 WILSHIRE
BOULEVARD – BEVERLY HILTON REVITALIZATION –
PHASE 3 – WALDORF ASTORIA BUILD-OUT PROJECT

NAME OF CONSULTANT: PCR Services Corporation

RESPONSIBLE PRINCIPAL
OF CONSULTANT: Heidi Rous, CPP, Director

CONSULTANT'S ADDRESS: PCR Services Corporation
201 Santa Monica Blvd. Suite 500
Santa Monica, CA 90401
Attention: Heidi Rous, Director

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Raj Patel, City Building Official

COMMENCEMENT DATE: January 15, 2015

TERMINATION DATE: January 14, 2017, unless extended pursuant
to Section 2 of the Agreement

CONSIDERATION: Not to exceed \$294,000 based on the rates set
forth in Exhibit B

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND PCR SERVICES CORPORATION FOR AIR QUALITY
(DUST) MONITORING SERVICES FOR THE 9876 WILSHIRE
BOULEVARD – BEVERLY HILTON REVITALIZATION –
PHASE 3 – WALDORF ASTORIA BUILD-OUT PROJECT

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called “CITY”), and PCR Services Corporation, (hereinafter called “CONSULTANT”).

RECITALS

A. CITY desires to have certain services provided (the “services”) as set forth in Exhibit A (the “Scope of Work”), attached hereto and incorporated herein.

B. CONSULTANT represents that it is qualified and able to perform the services.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT’s Services. CONSULTANT shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. City shall have the right to order, in writing, changes in the Scope of Work. Any changes in the Scope of Work by CONSULTANT must be made in writing and approved by both parties. The cost of any change in the Scope of Work must be agreed to by both parties in writing.

Section 2. Time of Performance. CONSULTANT shall commence its services under this Agreement upon the Commencement Date or upon a written receipt of a notice to proceed from CITY. CONSULTANT shall complete the performance of services by the Termination Date set forth above and/or in conformance with the project timeline established by the City Manager or his designee on or by the Termination Date set forth above. The City Manager or his designee may extend the time of performance in writing for two additional one-year periods pursuant to the same terms and conditions of the Agreement.

Section 3. Compensation. CITY agrees to compensate CONSULTANT, and CONSULTANT agrees to accept in full satisfaction for the services required by this Agreement the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein. Said Consideration shall constitute reimbursement of CONSULTANT’s fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). CITY shall pay CONSULTANT said Consideration in accordance with the schedule of payment set forth in Exhibit B, attached hereto and incorporated herein.

Section 4. Method of Payment. CITY shall pay CONSULTANT said Consideration in accordance with the method and schedule of payment set forth in Exhibit B, attached hereto and incorporated herein.

Section 5. Independent Contractor. CONSULTANT is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as herein set forth. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 6. Assignment. This Agreement shall not be assigned in whole or in part, by CONSULTANT without the prior written approval of CITY. Any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s)

(a) CONSULTANT's Responsible Principal set forth above shall be principally responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible by CONSULTANT shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 8. Personnel. CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Permits and Licenses. CONSULTANT shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of CONSULTANT. CONSULTANT affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

Section 11. Insurance.

(a) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by CONSULTANT in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(4) Professional Liability Insurance. A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of One Million Dollars (\$1,000,000) per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by CITY. Further, CONSULTANT agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(b) CONSULTANT shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+,VII in the latest edition of Best's Insurance Guide.

(d) CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

(e) At all times during the term of this Agreement, CONSULTANT shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONSULTANT shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance shall contain an endorsement naming the CITY and the Beverly Hills Unified School District ("DISTRICT") as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(f) The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(g) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, the Beverly Hills Unified School District (“DISTRICT”), and every officer, employee and agent of CITY and DISTRICT, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement

Section 13. Termination.

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days’ written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement. CONSULTANT shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 14. CITY’s Responsibility. CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT’s Scope of Work

Section 15. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Records and Inspections. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years. City shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

Section 17. Changes in the Scope of Work. The CITY shall have the right to order, in writing, changes in the scope of work or the services to be performed. Any changes in the scope of work requested by CONSULTANT must be made in writing and approved by both parties.

Section 18. Notice. Any bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party’s regular business hours or by facsimile before or during the receiving party’s regular business hours; or (b) on the second business day following deposit in the United States mail, postage

prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 19. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 20. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

Section 21. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 22. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 23. CITY Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

Section 24. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the ____ day of _____ 2015, at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

LILI BOSSE
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE
City Clerk

CONSULTANT: PCR SERVICES CORPORATION

Heidi Reus, for
GREGORY J. BROUGHTON
President and Secretary

APPROVED AS TO FORM

Laurence S. Wiener
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

Susan Healy Keene
For SUSAN HEALY KEENE
Director of Community Development

Karl Kirkman
KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF SERVICES

CONSULTANT shall provide air quality monitoring at the 9876 Wilshire Boulevard site and El Rodeo School for the 9876 Wilshire Boulevard – Hilton Revitalization – Phase 3 – Waldorf Astoria Build-Out Project.

1. CONSULTANT shall review the contractors' construction plans, focusing on the description of major construction equipment and procedures used for construction phases of the project; primary locations of construction sites; and anticipated durations. CONSULTANT shall estimate construction phases that are likely to cause elevated levels of dust at the El Rodeo School site based on construction plans, to assist in calibrating the monitors.

2. CONSULTANT shall develop a monitoring plan and establish thresholds based on the South Coast Air Quality Management District thresholds for Particulate Matter (PM10) at the El Rodeo School site. This threshold will be based on a 5-hour rolling average dust concentration equivalent to South Coast Air Quality Management District ("SCAQMD") Rule 403. The 1-hour threshold will be established at 150 ug/m^3 as a trigger level for corrective measures.

3. CONSULTANT shall furnish on a rental basis, install and maintain three DustTrak2 (Model 8530) dust monitors. One monitor will be placed at an upwind location, one monitor to be placed at the El Rodeo School, and the other at the project construction site. In addition, one anemometer will be installed to measure wind speed and direction. Program monitors will measure and store PM10 concentrations on an hourly basis for the duration of project's construction phase. Monitors will be calibrated using factory provided equipment to ensure that data is acceptable within manufacturer specifications. Data will be recorded at 5-minute intervals, downloaded on a daily basis, and processed to determine if PM10 concentrations exceed SCAQMD thresholds. CONSULTANT shall also program a pre-defined trigger level of 150 ug/m^3 over a 1-hour averaging period. If/when dust concentrations levels are recorded in excess of that limit, the system will be equipped with a visual alarm (strobe light) and will also notify CONSULTANT by text message and/or email. It should be noted that delay time between the occurrence of the exceedance and notification in this manner typically runs 5 to 20 minutes. Once alerted, CONSULTANT staff will download the data, and, if warranted, contact the CITY to develop/implement immediate corrective actions (see Task E below).

4. Monitoring is expected to commence January 2nd, 2014 until January 2nd, 2017, for a period of no more than 24 months. After monitoring is complete, the monitors will be removed. However, if necessary, the monitors may remain on-site for subsequent phases of construction. If monitors remain onsite until the next monitoring phase, rental fees and maintenance cost will be billed on a time and materials basis under a separate written amendment signed by both parties. The scope assumes one setup and take-down event for the duration of monitoring. If additional setup and take-down activities are required, it may be billed on a time and materials basis. However, monitors may be relocated up to three (3) times during the monitoring phase. This monitoring phase is expected to cover construction activities for a period of 24 months.

5. CONSULTANT shall perform the necessary review and validation of data on a routine (weekly) basis, unless more frequent analysis is warranted. CONSULTANT shall prepare and provide written reports to CITY on a weekly basis, describing the measured dust concentrations at the El Rodeo School and project construction site, in tabular and graphical formats. In addition to weekly reports, reports will also be provided on a monthly basis to CITY staff. The weekly and monthly reports will also include exceedances of trigger levels or SCAQMD thresholds and corrective actions taken, if any. Weekly reports will contain dust monitoring data from the school site in graphical and tabular form. Monthly reports will contain data from the school and construction site.

6. During dust monitoring, CONSULTANT shall develop, as needed, a corrective action plan to be implemented if dust (PM10) concentrations at sensitive uses exceeds a threshold established in Item 3 above. These measures will include downloading the data within one (1) hour of notification (during normal CONSULTANT operating hours) and performing quality control processing of the data from the school and construction site. CONSULTANT allocated an allowance of 16 hours on an as needed time and materials basis for this task. The hours allocated for this task assumes up to 2 such events per month over a 24 month duration expected for construction activities.

7. CONSULTANT shall attend meetings with CITY, school El Rodeo personnel, project construction teams, and others, as requested by CITY. Regular telephone meetings will be held on a weekly basis with project construction teams and/or environmental monitoring staff to determine construction activities anticipated for the week. CONSULTANT assumed project initiation would require approximately 5 hours and allocated an additional 24 hours for on-site meetings with CITY and El Rodeo school staff. Weekly meetings with project construction teams will require a total of 30 hours over 24 months.

EXHIBIT B

SCHEDULE OF RATES AND PAYMENT

Schedule of rates

CONSULTANT shall perform the services required by this Agreement based on the rates set forth in this Exhibit in an amount not to exceed **\$294,000**.

Construction Dust Monitoring Services	
Task	Cost Not to Exceed
Labor	\$225,500
Expenses and Equipment	\$68,500
Total	\$294,000

CONSULTANT shall be paid on a time-and-materials basis at the rates below including labor and reimbursable expenses. CONSULTANT shall be reimbursed for expenses reasonably incurred in the performance of the Agreement which shall include instrumentation usage fee and traveled mileage.

PCA Labor Costs	Hourly Rate
Director (AQCA)	\$185
Senior Engineer/Scientist I	\$125
Assistant Engineer/Scientist	\$80
Senior Publications Specialist	\$80
PCA Materials Costs	Unit Cost
Equipment, Materials, Mileage Expense Reimbursement	TBD – As approved by CITY, in writing

PCR Costs Not to Exceed	Year One	Year Two
Labor (Hourly Rate per task)	\$113,565	\$111,925
Expenses (Supplies, Equipment, Mileage Reimbursement, etc.)	\$31,807	\$36,703
Total - \$294,000	\$145,372	\$148,627

Schedule of Payment

CONSULTANT shall submit an itemized statement to CITY for its services performed on a form approved by CITY, which shall include documentation setting forth in detail a description of the services rendered, hours of service, and reimbursable expenses. CITY shall pay CONSULTANT the undisputed amount of such billing within thirty (30) days receipt of the same.



CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	<u>LIMITS</u> P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days'** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
Authorized Insurance Representative

AGENCY: _____

TITLE: _____
ADDRESS: _____