

REPORT TO CITY COUNCIL

DATE: **OCTOBER 7, 2008**

TO: **HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

FROM: **GREG RAMIREZ, CITY MANAGER**

BY: **RAMIRO ADEVA, CITY ENGINEER**

SUBJECT: **APPROVAL OF AN AGREEMENT WITH PMC FOR UPDATING THE CITY'S ARTERIAL STREET SYSTEM DEVELOPMENT FEE, MORE COMMONLY KNOWN AS THE TRAFFIC IMPACT FEE (TIF), AND ANALYZE THE POTENTIAL OF A SEPARATE FEE TO BE KNOWN AS THE AGOURA VILLAGE INFRASTRUCTURE FEE (AVIF)**

On August 27, 2008, the City Council authorized staff to solicit proposals from qualified firms for updating the City's Traffic Impact Fee (TIF). The current TIF has been in place since 1988 and needs to be updated to reflect current day construction costs. In addition, the scope of work for the contract includes the analysis of the potential creation of a separate fee, to be known as the Agoura Village Infrastructure Fee (AVIF), as a potential funding source for improvements within the Agoura Village Specific Plan area.

On September 18, 2008, staff received proposals from two prospective firms, listed in order with respect to their cost proposals, as follows:

Firm	Proposed Cost Per Year
Revenue & Cost Specialists, LLC	\$16,250
PMC	\$38,800

A three member panel, consisting of two members of staff and one member from the city's traffic engineering consultant, closely evaluated and scored both proposals based on the following criteria: (1) Quality and Completeness of Proposal, (2) Capability and Experience of Firm, (3) Reference Evaluation, (4) Methodology and Work Plan, and (5) Overall Proposal Cost. When the scores were compared, the results were consistent across the board. PMC's proposal was more thorough and demonstrated a clear and detailed approach to completing the work. Follow up conversations with PMC staff re-emphasized the firm's understanding of the scope of work as well. In addition, PMC's proposal included a detailed cost estimate showing that all aspects of the job were accounted for, lessening the likelihood of future change orders for items that could have been missed.

It should be noted that the award of the contract is not based solely on cost, but the aforementioned criteria as a whole. Therefore, although the cost is twice as high as the next proposal, staff feels confident that PMC is the more qualified firm for this contract based on their

overall qualifications and understanding of the scope of work, reference checks, and the quality of their proposal.

Staff has reviewed PMC's fee proposal (see attached). Following the approval of the FY 08-09 budget, the scope of work originally anticipated for this contract has increased to include the study of the additional AVIF fee and GIS services have also been included to give a more comprehensive final report. Therefore, staff is recommending amending the original budget by authorizing the use of an additional \$20,000 from the City's Traffic Impact Fee (TIF) account for the project, thus amending the overall project budget to \$40,000.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff respectfully recommends the City Council:

1. Approve the Agreement for Consulting Services with PMC, for updating the City's Arterial Street System Development Fee, more commonly known as the Traffic Impact Fee (TIF), and analyze the potential of a separate fee to be known as the Agoura Village Infrastructure Fee (AVIF); and
2. Authorize the use of an additional \$20,000 from the City's Traffic Impact Fee (TIF) account for the project; and
3. Authorize the Mayor to sign the agreement on behalf of the City Council.

Attachment: Agreement for Consulting Services
Fee Proposal

AGREEMENT FOR CONSULTANT SERVICES
WITH THE CITY OF AGOURA HILLS

NAME OF CONSULTANT: PMC

RESPONSIBLE PRINCIPAL OF CONSULTANT: Attn: Philip O. Carter, President

CONSULTANT'S ADDRESS: 2729 Prospect Park Drive, Suite 220
Rancho Cordova, CA 95670

CITY'S ADDRESS: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
Attn: City Manager

COMMENCEMENT DATE: October 8, 2008

TERMINATION DATE: March 31, 2009

CONSIDERATION: Contract Price
Not to Exceed: \$38,800

ADDITIONAL SERVICES <i>(Describe Services, Amount, and Approval):</i>

Date: _____ Amount: \$ _____ Authorized By: _____
(Not to Exceed 10% of Contract Price) City Manager

**AGREEMENT FOR CONSULTANT SERVICES BETWEEN
THE CITY OF AGOURA HILLS AND PMC**

THIS AGREEMENT is made and effective as of October 8, 2008, between the City of Agoura Hills, a municipal corporation ("City") and PMC ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM.** This Agreement shall commence on October 8, 2008, and shall remain and continue in effect until tasks described herein are completed, but in no event later than March 31, 2009, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES.** Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE.** Consultant shall at all time faithfully, competently and to the best of his or her ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **PREVAILING WAGES.** Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the City Clerk. Copies may be obtained at cost at the City Clerk's office of the City of Agoura Hills. Consultant shall provide a copy of prevailing wage rates to any staff or sub-contractor hired, and shall pay the adopted prevailing wage rates as a minimum. Consultant shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Consultant shall forfeit to the City, as a penalty, the sum of \$25.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any subcontractor under him, in violation of the provisions of the Contract.

5. **PAYMENT.**

A. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the payment rates and schedule of payment are null and void. This amount shall not exceed \$38,800 ("Contract Price") for the initial Term of the Agreement unless additional payment is approved as provided in this Agreement.

The City Manager may approve additional work up to ten percent (10%) of the amount of the Contract Price. Any additional work in excess of this amount shall be approved by the City Council.

B. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by the City Council and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

C. Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

A. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

B. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 4.

7. DEFAULT OF CONSULTANT.

A. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

B. If the City Manager or his or her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time,

the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS.

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION. The Consultant agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City.

10. INSURANCE REQUIREMENTS. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.

3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials,

employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

F. Verification of Coverage. Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

11. INDEPENDENT CONTRACTOR.

A. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

B. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES. The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those

employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

13. RELEASE OF INFORMATION.

A. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

14. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301
Attention: City Manager

CITY OF AGOURA HILLS

John M. Edelston,
Mayor

ATTEST:

Kimberly M. Rodrigues, CMC
City Clerk

APPROVED AS TO FORM:

Craig A. Steele,
City Attorney

CONSULTANT

PMC
2729 Prospect Park Drive, Suite 220
Rancho Cordova, CA 95670
Philip O. Carter, President
(916) 361-8384
(916) 361-1574 Fax

By: _____
Name:
Title:

By: _____
Name:
Title:

[Signatures of Two Corporate Officers Required]

EXHIBIT A

TASKS TO BE PERFORMED

I. Analyze previous TIF Study

A copy of the 1988 TIF report will be provided. Consultant shall read and understand all aspects of the report, and be able to make recommendations and/or provide comments on how the new report will/or should be different, and provide the justifications for such recommendations.

II. Define Formula used for Calculating Updated TIF fees/rates

Consultant shall clearly identify the steps and important points used to come up with the formula for calculating the new TIF rates. All assumptions should be duly noted in the report, and should always be approved by the City before using them in any calculation.

For example, formula from the 1988 study takes the estimated cost of deficiencies within the arterial street network, and divides it by the anticipated “pm peak-hour” trips within a 17-year timeframe.

III. Determine Deficiencies in the Arterial Street Network and Estimate Associated Construction Costs to Correct Those Deficiencies

Using a combination of available As-Built plans and field visits, along the land use plans and traffic data, the consultant is expected to determine where deficiencies exist, and give a realistic cost estimate for correcting those deficiencies. In addition to using any available data from the City, consultant should account for several field visits in order to conduct an analysis that is as comprehensive as possible. An inflation factor shall be formulated and noted in the report to account for expected increases in construction costs each year.

IV. Determine updated Traffic Impact Fee (TIF) Rate for the Following Categories:

- 1) Residential
- 2) Commercial
 - a) Shopping Center
 - b) Retail/Service
 - c) Motel/Hotel
 - d) Business Park/ Manufacturing
 - e) Business Park-Office/ Retail
 - f) Mixed Commercial/ Residential
 - g) Commercial Recreation
 - h) Private Schools

With the exception of item “h”, these categories are all listed in the 1988 report, and are used to calculate a development’s TIF. Consultant is expected to update these rates, and identify/ recommend any other categories that may be need to be considered. The Final Report should include a matrix comparing rates from the 1988 report to the new report.

V. Define Formula used for Calculating Agoura Village Infrastructure Fee (AVIF)

Since this will be a completely new fee, the consultant must create a justifiable formula for calculating the AVIF, and provide all the back-up data and justification used for its determination.

VI. Determine Separate Agoura Village Infrastructure Fee (AVIF) to be applied to each category of possible development with Agoura Village

Similar to Item IV above, an AVIF rate will need to be determined for all development categories, however, this fee will only be assessed to new developments within the Agoura Village Specific Plan area. City will provide consultant with a copy of the specific plan. The consultant is expected to review and understand the different developments allowed within Agoura Village, and with assistance from City staff, the consultant will come up with appropriate development categories where this fee will be assessed.

Similar to the TIF, an inflation factor shall be formulated and noted in the report to account for expected increases in construction costs each year.

VII. Prepare Periodic Updated Schedule of Deliverables and Meetings

The consultant should include time and cost for progress meetings with City staff to discuss the status of the study and preparation of the final report. The consultant should also plan for attending multiple City Council meetings to answer questions regarding the Final Report.

EXHIBIT B

PAYMENT RATES AND SCHEDULE

Payment Rates:

Position	Hourly Rate
Transportation Director	\$175.00
Senior Transportation Planner	\$135.00
Project Manager	\$145.00
Project Engineer	\$130.00
Various Staff Resources	\$100.00

Schedule:

Task #	Task Description
1	Kick-off Meeting/Analyze 1988 TIF Study
2	Define TIF Fee Formula
3	Determine Deficiencies and Costs
4	Determine Updated TIF Rates
5	Define Formula for Agoura Village Infrastructure Fees (AVIF)
6	Determine AVIF Fees
7	Deliver and Present Final Reports

****Contract price not to exceed \$38,800**