

City of Piedmont
CITY COUNCIL AGENDA REPORT

DATE: April 3, 2017

TO: Mayor and Council

FROM: Paul Benoit, City Administrator

SUBJECT: Consideration of Award of Contract to Harley Ellis Deveraux for
Operational Analysis of the Aquatics Master Plan Conceptual Design

RECOMMENDATION:

Authorize the City Administrator to execute an agreement with Harley Ellis Deveraux (HED) for operational analysis of the Aquatics Master Plan Conceptual Design in the amount of \$23,500.

BACKGROUND:

On November 7, 2016 City Council accepted and commended the Aquatics Master Plan Conceptual Design as presented by HED and recommended by the Recreation Commission. This conceptual design was the result of an extensive community process that arrived at a high level view of how the community's aquatics needs could best be met within a slightly enlarged footprint at the existing location of the Piedmont Community Pool.

Operational analysis of the costs and expected rate of return of the conceptual design is the proposed next step in this comprehensive master planning process in order to determine the facility's estimated need for an operational subsidy from the General Fund.

The proposed feasibility study will include research and analysis of area aquatic providers, market area demographics, Piedmont aquatic user groups, facility management outline, opinion of probable revenue, opinion of probable expenses and opinion of facility financial performance. The results of the operational analysis will inform Council as to appropriate next steps in Master Planning process.

The City Attorney has reviewed and approved the attached agreement as to form and legality.

Attachments:

Agreement with Harley Ellis Deveraux
Harley Ellis Deveraux Proposal for Additional Services

By: Sara Lillevand, Recreation Director

CONTRACT

This Contract made **April 3, 2017** between the City of Piedmont, California, a municipal corporation, 120 Vista Avenue, Piedmont, California 94611, ("City") and Harley Ellis Devereaux ("Independent Contractor").

1. City is a municipal corporation which needs certain services and software as more specifically set forth hereafter.
2. Independent Contractor agrees to provide these services and software to the City under the terms and conditions set forth in this Contract ("Contract").

3. Services

Independent Contractor shall provide the services as follows: Provide an operational analysis of the costs and expected rate of return on the Aquatics Master Plan Conceptual Design accepted by City Council on November 7, 2016, in accordance with the proposal submitted by Independent Contractor dated February 22, 2017, which is set forth in Exhibit A attached hereto and incorporated herein.

4. Compensation

- a. City will pay the Independent Contractor the lump sum of: **\$23,500** for the services described in Section 3 above. City shall issue payment within 30 days of the completion of the services described in Section 3 above.

5. Term

This contract shall begin on the Effective Date. Unless otherwise terminated as provided in this Contract, this Contract shall terminate six months from the Effective Date.

6. Contractual Relationship

The parties intend that an independent contractor-employer relationship will be created by this Contract. City is interested only in the results to be achieved, and the conduct and control of the work will lie solely with Independent Contractor. Independent Contractor is not to be considered an agent or employee of City for any purpose, and neither Independent Contractor nor any employees of Independent Contractor are entitled to any of the benefits that City provides for City's employees. It is understood that City does not agree to use Independent Contractor exclusively. It is further understood that Independent Contractor is free to contract for similar services to be performed for other cities, persons or entities during the term of the Contract. Independent Contractor shall be fully responsible for all income, social security or other taxes or deductions, including

but not limited to worker's compensation and unemployment deductions, relating to the services it performs for City.

7. Indemnity and Hold Harmless

To the fullest extent permitted by law, Independent Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless City and its officers, elected officials, employees, agents, and volunteers (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Independent Contractor or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, reasonable court costs and attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Contract by Independent Contractor or by any individual or entity for whom Independent Contractor is legally liable, including but not limited to, officers, agents, employees, subcontractors or consultants of Independent Contractor. Neither termination of this Contractor nor completion of the Services shall release Independent Contractor from its obligations under this Section 7, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

8. Insurance

The following minimum levels of insurance coverage shall be provided during the term of this Contract. Prior to the execution of the Contract, Independent Contractor shall provide proof of insurance required. Independent Contractor shall provide City thirty (30) days prior written notice of termination or material change in coverage and ten (10) days prior written notice of cancellation for non-payment.

The City of Piedmont, its Council Members, directors, officers, agents and employees shall be named as additional insured. Independent Contractor shall provide City with an additional insured certificate for each such insurance coverage.

A.	<u>Professional Liability Insurance.</u>	\$2,000,000
B.	<u>Worker's Compensation Insurance.</u>	Statutory Limits
C.	<u>Automobile Insurance</u>	\$1,000,000
C.	<u>Public Liability and Property Damage Insurance.</u>	\$2,000,000 (single limit per occurrence)

Independent Contractor shall notify City within one (1) business day after it has been served or notified of any claim or legal action that in any way involves Independent

Contractor, and the City of Piedmont, even if the City is not named in the claim or as a defendant in any legal action, if such notification comes to Independent Contractor from any source other than the City. Independent Contractor shall also promptly provide City, within the same time period set forth in the prior sentence, with copies of any document or information it has regarding such claim or legal action.

9. Assignability

Independent Contractor shall not assign, delegate, or transfer any interest in this agreement nor the performance of any Independent Contractor's obligations hereunder, without the prior written consent of the City.

10. Miscellaneous

As used in this Contract, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

11. Notices

Any notices to be sent pursuant to this Contract shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage addressed to City at 120 Vista Avenue, Piedmont, California 94611, and to Independent Contractor at 417 Montgomery Street, San Francisco, CA 94104, or at such other address as each party shall give the other in writing from time to time, and notices shall be deemed received at the time of personal delivery or three (3) working days after being placed in the United States Mail, postage prepaid, certified mail, return receipt requested.

12. Governing Law

This Contract shall be governed by the laws of the State of California. Jurisdiction and venue of litigation arising from this Agreement shall be in the County of Alameda, State of California.

13. Modification

Any modification of this Contract will be effective only if it is in writing signed by all parties to this Contract.

14. Time is of the Essence

Time is of the essence in the performance of this Contract.

15. Termination

The following provisions shall govern termination under this Contract:

- a. Either party may terminate this Contract for cause as follows:
 - (1) The party electing to terminate shall give the other party written notice of termination at least five (5) days prior to the termination date, setting forth very specifically the grounds for termination, the specific provisions of the Contract that has been violated, and a full statement of the facts surrounding the violations(s).
 - (2) If the terminated party so elects, the parties shall meet promptly and make good faith efforts to resolve the violation(s) in a mutually agreeable way.
 - (3) If any such violation cannot be resolved by the parties at such meeting, or at any mutually agreed extension(s) of such meeting, the termination shall proceed.
 - (4) If the violation(s) have not been resolved, the terminating party may proceed with termination, and with retaining other person(s) or entities to provide services, if the terminating party is the City.
- b. Either party may terminate the Contract at any time without cause upon at least sixty (60) days prior written notice to the other party. In the event of any such termination by City, Independent Contractor shall be paid for services actually performed through the date of termination, and Independent Contractor's work shall be immediately discontinued as of that date, except that City may elect, at City's option, to have Independent Contractor complete one or more projects or specific activities which are then in progress, in which case Independent Contractor shall be paid for such services until completion. If terminated by Independent Contractor, any assignment accepted by Independent Contractor prior to the notice of termination shall be completed if desired by City.

16. Equal Opportunity

Independent Contractor shall insure that its policies and practices provide equal opportunity to all applicants and employees without regard to race, color, creed, gender, age, religion, national origin, sexual preference, gender identity, marital status, disability, Acquired Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) and in addition, Independent Contractor must comply with the Americans with Disabilities Act.

17. Compliance with Laws

Independent Contractor shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Independent Contractor represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits, insurance and approvals which are legally required for Independent Contractor

to practice its profession.

18. Entire Agreement

This Contract constitutes the entire agreement of the parties with respect to the matters set forth herein. Any amendments, modifications, or changes to this Agreement shall be in writing and signed by both parties. In the event of a conflict between the terms set forth in this Contract and the terms set forth in any exhibit to this Contract, the terms of this Contract shall govern over the terms of any exhibit.

19. Ownership of Documents

All plans, studies, documents and other writings, including working notes and internal documents, prepared by and for Independent Contractor, its officers, employees and agents and subcontractors in the course of implementing this Agreement, shall become the property of City upon payment to Independent Contractor for such work, and City shall have the sole right to use such materials in its discretion without further compensation to Independent Contractor or to any other party. Independent Contractor shall, at Independent Contractor's expense, provide such reports, plans, studies, documents and other writings to City upon written request. All documents prepared by Independent Contractor are confidential and shall be maintained to preserve their confidential nature. Release of any such documents to third parties shall only be made upon written consent of City.

20. Licenses

Independent Contractor represents and warrants that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Independent Contractor to practice its profession. Independent Contractor represents and warrants to City that Independent Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Independent Contractor to practice its profession.

21. Waiver

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Contract at Piedmont, California, the day and year first above written.

CITY OF PIEDMONT:

HARLEY ELLIS DEVEREAUX:

By: _____
Paul Benoit, City Administrator

By: _____
John R. Dale, Principal

Attest:

John O. Tulloch, City Clerk

Approved as to form and legality:

Michelle Marchetta Kenyon, City Attorney
Chad Herrington, Assistant City Attorney

WWW.HED.DESIGN

February 22th, 2017

Chester Nakahara
Public Works Director
City of Piedmont
120 Vista Ave.
Piedmont, CA 94611

Subject: - **City of Piedmont Aquatic Center
Proposal for Additional Services**

Dear Chester,

Harley Ellis Devereaux (HED) is pleased to present the following proposal for additional services in support of the Master Plan for the City of Piedmont Aquatics Center. We are pleased to have the opportunity to continue to serve your design needs and look forward to discussing this proposal with you.

We have prepared this proposal as the next step in a comprehensive master planning process which has included both extensive staff meetings and public outreach to reach consensus about the direction for the redesign of the Aquatic Center. The next step proposed is an Operational Analysis to the costs and expected rate of return in the investment to rebuild the Aquatic Center. We are confident that we have the qualified staff and experience necessary to complete your project.

Scope of Work

The following is the summary of the proposed scope of work:

[Chicago](#)[Detroit](#)[Los Angeles](#)[San Diego](#)[San Francisco](#)

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OPERATIONAL ANALYSIS:

- A. Our aquatic consultant, Counsilman Hunsaker, will prepare a Feasibility Study and will develop an opinion of operations protocol for the proposed project. The following will be researched and analyzed:
1. Area Aquatic Providers
 2. Market Area Demographics
Population, Age, Income
 3. Area Aquatic User Groups
Historic Usage and Project Level of Growth
 4. Facility Management Outline
Facility Operating Schedule
Facility Capacity Limits
Organization Chart
Wage Structure
 5. Opinion of Probable Revenue
Market Penetration
Seasonal Usage
Develop Fee Structure
Opinion of Attendance By User Group
Opinion of Revenue
 6. Opinion of Probable Expenses
Labor Demand
Chemical Demand
Supply Demand
Maintenance and Repair Demand
Utility Demand
 7. Opinion of Facility Financial Performance

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I. Fee Proposal

1. Basic Services Fee

Harley Ellis Devereaux' fee for providing the above outlined services will be a lump sum amount as follows:

Task

- | | |
|--------------------------------|-------------|
| 1. Operational Analysis | \$13,500.00 |
| 2. Client / Community Meetings | \$5,500.00 |

Basic Services Fee	\$19,000.0
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Reimbursable Expenses (not to exceed) ²	\$4,500.00
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TOTAL FEE	\$23,500.00
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2. Reimbursable Expenses

The following out-of-pocket expenses are part of the not-to-exceed allowance above and will be reimbursed at the rate of One and Fifteen hundredths (1.15) times the actual cost to HED:

- Reproduction and delivery-related expenses for documents to be used for bidding and construction estimating purposes.
- Travel expenses including air fare, mileage, accommodation if necessary.

II. General Conditions

Client Responsibilities

The City of Piedmont shall furnish HED with files, relevant reports, and any additional information available to do with the current operation of the facility.

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Additional Services Fee

Additional Services shall be provided for the project if authorized or confirmed in writing by the City. Such Additional Services include advanced visualization materials (i.e.: *Photo Realistic Renderings, Fly Through*) and any other services not otherwise included in this agreement under basic services.

Harley Ellis Devereaux' fee for additional services beyond the scope of services outlined above and which is in addition to the basic services fee amount will be negotiated based upon the services requested.

Payments

Invoices for our services are submitted every month for the portion of services completed. Payment is expected within thirty (30) days of receipt of invoice.

Project Schedule

Harley Ellis Devereaux will begin work on the project immediately upon receipt of your authorization to proceed. At the start of the project, we will review the anticipated schedule for the study in collaboration with the City in order to ensure that all stakeholders can be appropriately accommodated within the overall timeline.

Insurance

Harley Ellis Devereaux carries both general business and architect's and engineer's professional liability insurance coverage for the protection of both our firm and our clients. We would be pleased to share the details of said coverage if you so request.

Limitation of Liability

To the fullest extent permitted by law, the total liability in the aggregate, of Architect and Architect's Consultants, and their respective officers, directors, shareholders, principals, employees, successors and assigns, to the Owner and anyone claiming by, through or under the Owner, including any purported third party beneficiaries to the Agreement for this project for any and all injuries, claims, losses, damages, liabilities or expenses whatsoever arising out of or in any way related to the services of the Architect and/or the Architect's Consultants, the Project or the Agreement, including any indemnity and defense provisions contained herein for any cause or causes whatsoever, including, but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, indemnity or breach of warranty by Architect and/or Architect's Consultants and their respective offices, directors, shareholders, principals, employees, successors and assigns, shall not exceed the amount of the professional services fee for this

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project.

Termination, Suspension or Abandonment

In the event that this project is either, terminated, suspended or abandoned by the client, we require seven (7) day notice from the client and payment for services performed and costs incurred up to the termination effective date.

Hazardous Materials

Harley Ellis Devereaux does not have specialized expertise in the specifying of treatment and/or handling of new and/or existing asbestos-containing, asbestos-contaminated, or other hazardous materials, above or below surface, and our professional liability insurance policy does not include coverage of these services. Therefore, Harley Ellis Devereaux cannot provide these services. It is our understanding that the District will retain, if necessary, a qualified industrial hygienist and/or contractor to provide these services.

Construction Cost

The operational analysis will make assumptions about the projected cost of the reconfigured facility based on estimates associated with the Master Plan to date. As you are aware, neither the Architect nor the Client has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. As such, the Architect cannot and does not warrant or represent that preliminary cost estimates will not vary from any estimate of construction cost or evaluation prepared or agreed to by Harley Ellis Devereaux.

Dispute Resolution

Harley Ellis Devereaux believes that the use of Alternate Dispute Resolution (ADR) methods work to the best interest of both parties, in the event that a dispute should arise pertaining to the contract performance of either or both parties. Our firm actively advocates the use of ADR methods including mandatory informal negotiations, mediation and binding arbitration. We will suggest various ADR methods and contract clauses in the final form of contract to be used, upon acceptance of this proposal by the City of Walnut Creek.

If this proposal meets with your approval and Harley Ellis Devereaux is awarded this project, we propose to convert this proposal to a mutually acceptable standard form of agreement between owner and design team. We will, in the interim, begin our services promptly upon receipt of your notification to proceed. This proposal will be considered valid for sixty (60) days from date of

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issue.

If you have any questions regarding this proposal for services, or if you wish to discuss any aspect of the project, please contact me directly. We look forward to this opportunity to serve the City of Piedmont.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Dale", with a checkmark at the beginning.

John Dale, FAIA, LEED AP Principal-in-Charge

cc: Brett Paloutzian