Print Form

FOR CLERK USE ONLY
City Council
Item No.

CITY COUNCIL AGENDA
FACT SHEET

Redevelopment Agency
Department

October 27, 2009
Requested Date

1. **Request:**

Council Approval	☒	Information Only/ Presentation	☐
Other (specify)	☐	Hearing	☐

2. **Requested Action:**

Approve Professional Services Agreement with Traffic Safety Engineers as Project Manager for the U. S. Department of Commerce EDA Grant Infrastructure Improvements Project

3. **Fiscal Impact:**

Revenue:	Increase	☐	Source:	
	Decrease	☐	Amount:	$
Cost:	Increase	☐	Source:	FDA Grant
	Decrease	☐	Amount:	$65,500
	Does Not Apply	☐		

4. **Reviewed By:**

Finance Dept. on _____ By: _____
Comments:

City Attorney on _____ By: _____
Comments:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE:

Action	☐	Filing	☐
Consent	☐	Presentation	☐
Hearing	☐	Other(specify)	☐

Reviewed by: City Clerk _____ City Manager _____
Date _____ Date _____

Form FIN038 (Revised 07/2009)

CITY COUNCIL
AGENDA REPORT

SUBJECT: Approve Professional Services Agreement with Traffic Safety Engineers as Project Manager for the U. S. Department of Commerce EDA Infrastructure Improvements Project

AGENDA DATE: **October 27, 2009**

PREPARED BY: Rosalind Guerrero, RDA Director

APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: Approve Professional Services Agreement with Traffic Safety Engineers as Project Manager for the U. S. Department of Commerce EDA Infrastructure Improvements Project

FISCAL IMPACT: **$64,500.00** **EDA Grant**

BACKGROUND INFORMATION: (Prior action/information)
The U. S. Department of Commerce requires the city to follow federal guidelines in the implementation and development of the infrastructure improvement grant. Due to the amount of projects currently managed by Development Services and Redevelopment Agency staff, a project manager experienced in managing EDA projects is needed to expedite the progress.

Mr. Hui Lai, Traffic Safety Engineers (TSE) has been on contract since the year 2000 and most recently provided services on the application submitted to EDA for the $3 million dollar grant. TSE provides the experience needed to assist the city in the management of the EDA grant from the inception to the completion of construction. A detailed scope of work is included along with a Professional Services Agreement. Services to be provided for the EDA grant would be an extension of the current services, with a detailed scope of work specifically for the EDA grant.

EDA allows the hiring of a project manager to assist the city, of which EDA grant funds will be utilized as payment of the services to be provided and is within the budget expenditures.

RECOMMENDATION:
Approve Professional Services Agreement with Traffic Safety Engineers as Project Manager for the U. S. Department of Commerce EDA Infrastructure Improvements Project

Agenda Item No. ____

Page_____ Of _____

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the 27th day of October, 2009, by and between the City of Calexico ("City") and TRAFFIC SAFETY ENGINEERS, INC. ("Consultant").

RECITALS

A. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

AGREEMENT

1. Scope of Services. The Consultant shall furnish the following services in a professional manner. Consultant shall perform the services described on Exhibit A, entitled "Scope of Services", which is attached hereto and incorporated herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the City through its staff that it may provide from time to time.

2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City. All such work shall be completed no later than December 31, 2010. Time is of the essence for every provision of this agreement that states a time for performance and for every deadline imposed by the City.

3. Compensation. Compensation to be paid to Consultant shall be in accordance with the Schedule of Charges set forth in Exhibit B, which is attached hereto and incorporated herein by reference. In no event shall Consultant's compensation exceed $64,500.00 without additional authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Method of Payment. Consultant shall submit monthly billings to City describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Consultant no later than 30 days after approval of the monthly invoice by City staff. When payments made by City equal 90% of the maximum fee provided for in this Agreement, no further payments shall be made until the final work under this Agreement has been accepted by City.

5. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request.

6 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 shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

7. Interest of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by and during this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and

b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

8. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

9. Indemnity. Consultant agrees to defend, indemnify and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein), arising out of the performance of this Agreement,

except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, agents, employees or volunteers.

10. Insurance Requirements.

a. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City. This provision shall not apply if Consultant has no employees performing work under this Agreement. If the Consultant has no employees for the purposes of this Agreement, Consultant shall sign the "Certificate of Exemption from Workers' Compensation Insurance" which is attached hereto as Exhibit C.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars ($1,000,000) combined single limit for each occurrence.

b. Policy Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City of Calexico, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance and Endorsements. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

11. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

12. Licenses.

a. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City 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, insurance and approvals which are legally required of Consultant to practice its profession.

b. Consultant shall provide proof of a City Business License.

13. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Imperial, California.

14. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City:	City of Calexico, City Manager 608 Heber Ave. Calexico, CA 92231
If to Consultant:	C. Hui Lai, President Traffic Safety Engineers, Inc. 3100 Marywood Drive Orange, CA 92867

15. Consultant's Books and Records.

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative

is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

18. 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.

19. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

21. Termination. This Agreement may be terminated immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF CALEXICO:

_____
Victor M. Carrillo
City Manager

CONSULTANT:

_____
C. Hui Lai, P.E.
President, Traffic Safety Engineers, Inc.

APPROVED AS TO FORM:

_____
Jennifer M. Lyon
City Attorney

ATTEST:

_____
Lourdes Cordova
City Clerk

EXHIBIT A

SCOPE OF SERVICES

TSE foresees the scope of services needed to implement the EDA grant would consist of the following work tasks:

1. Develop Request for Proposals for the preparation of project design Plans, Specifications, and Estimates (PS&E) for the street widening, storm drain, water line and sewer improvements required for Cole Road, Sunset Blvd and Robinson Avenue.

2. Develop Request for Proposals for the preparation of project design Plans, Specifications, and Estimates (PS&E) for the new traffic signalization of the intersection of Cole Road and Portico Road, the modifications of existing traffic signals at the intersection of Cole Road/Van De Graff and S.R. 111 and Cole Road including traffic signal synchronization.

3. Review and evaluate consultant proposals and select the successful consultant to perform PS&E packages for street and traffic signal improvements.

4. Prepare a letter with consultant selection methodology to EDA requesting approval to award consultant agreement contracts.

5. Prepare City Council Agenda Report recommending approval to award consultant agreement contracts.

6. Coordinate, assist, supervise, and provide technical data and design decisions to consultants. Review, comment, and finalize PS&E packages as completed by the consultants. Ensure that all EDA required minimum wage rate schedules, minority and woman-owned subcontract requirements, project site EDA construction sign, and other EDA required contract boilerplates are included in the PS&E packages.

7. Submit PS&E packages to EDA for their review and approval to advertise projects for construction bids.

8. Advertise and solicit project construction bids.

9. Review and evaluate construction bids received, and determine the lowest responsible bidder.

10. Prepare a letter to EDA requesting approval to award construction contracts.

11. Prepare City Council Agenda Report recommending approval to award construction contracts.

12. Verify and obtain right-of-way and easement, if necessary, on Robinson Avenue required for the intended water line and sewer improvements.

13. Prepare Quarterly Performance Reports to EDA.

14. Prepare progress re-imbursement payment requests to EDA.

15. Prepare Project Final Report and Final Re-imbursement Payment Report to EDA.

16. Prepare other EDA required reports:

    a. Title opinion certification
    b. Certificate as to project site, row and easements
    c. Current and estimated employment data (required at project completion and 3rd & 6th year after project completion)
    d. Assurances of compliance
    e. GPRA data collection form

17. Miscellaneous Work
    a. Assist the City in maintaining EDA's required reports, payment records to consultants and contractors, construction bid advertisement records, construction bids, project expenditure and cost accounting records, correspondence letters with EDA, consultants, contractors, and maintain all project records for future EDA audit requirements.
    b. Meet and coordinate with EDA to resolve any issues or inquiries and prepare any reports and documents in compliance with EDA's requirements.
    c. Attend City staff meetings and City Council meetings, as required.

EXHIBIT B

SCHEDULE OF CHARGES

Detailed breakdown of fees by work tasks are as follows:

Work Task	Fee
1	$9,500
2	$5,500
3	$3,500
4	$5000
5	$500
6	$10,000
7	$500
8	$2,000
9	$2,000
10	$500
11	$500
12	$5,500
13	$2,500
14	$2,500
15	$3,000
16	$3,500
17	$8,000
Total Fees	$64,500

EXHIBIT C

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

I hereby certify that in the performance of the work for which this Agreement is entered into, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws of the State of California.

Executed on this 20th day of October 2009, at Orange, California.

_____

Consultant