

**AGENDA ITEM**7

- Public Hearing
- Ordinance
- Consent Calendar
- Discussion/Transaction

WALNUT CITY COUNCIL**AGENDA DATE: OCTOBER 28, 2015**

TO: Mayor Pacheco and Council Members

VIA: Robert Wishner, City Manager *RW*
Tom Weiner, Director of Community Development *TW*
Justin Carlson, City Planner *JC*

FROM: Derrick Womble, Senior Management Analyst *DW*

SUBJECT: Amendment to the Agreement for Leibold McClendon & Mann

RECOMMENDATION:

It is recommended that the City Council:

1. Amend the Agreement to extend the term of the Agreement to December 31, 2016; and
2. Authorize the City Manager to sign the Amendment; and
3. Appropriate \$25,000.00 from the General Fund reserve to account number 01-4600-6218 (Special Legal).

BACKGROUND:

On September 16, 2015, the Mt. SAC Board voted unanimously to approve an Agreement with Borrego Solar Systems, Inc. to design, install, and maintain the Photovoltaic Solar System.

Per the Walnut Municipal Code, Title VI, Chapter 25, Article II, Section 25-39, Mt. SAC is required to obtain a Conditional Use Permit (CUP). To date, Mt. SAC has not submitted an application to request a CUP and has indicated in an email dated October 19th, 2015, that they will not be requesting a CUP for said project.

At the regularly scheduled Council Meeting held on October 14, 2015, the City Council requested Staff return at the next meeting for the City Council to consider options relating to various actions the City may take in response to the Photovoltaic Solar System.

STAFF ANALYSIS:

Per the direction given by the City Council, Staff is recommending retaining the services of Leibold McClendon & Mann to perform special legal services in response to Mt. SAC's proposed Photovoltaic Solar System.

Leibold McClendon & Mann will assist the City Council and Staff by reviewing and analyzing the entitlement and application or exemption of City land use regulatory authority pursuant to Proposition 39, and applicable Government Code provisions and case law. In addition, the firm will coordinate with the City's CEQA consultant.

Therefore, it is recommended that the City Council approve the amendment to the Agreement between the City of Walnut and Leibold McClendon & Mann.

FISCAL IMPACT:

If approved, an appropriation totaling \$25,000 will be required from the General Fund reserve. If additional funds are needed, an additional appropriation request will be presented to the City Council for consideration.

RELATION TO MISSION STATEMENT:

We will exceed expectations by striving to be educated, well informed, and collaborate by encouraging open discussion.

Attachments:

1. Leibold McClendon & Mann – Proposal & Scope of Services
2. Leibold McClendon & Mann – Amendment

ATTACHMENT 1

Leibold McClendon & Mann

Proposal and Scope of Services

LEIBOLD McCLENDON & MANN

A PROFESSIONAL CORPORATION

9841 IRVINE CENTER DRIVE, SUITE 230
IRVINE, CALIFORNIA 92618
(949) 585-6300
FAX: (949) 585-6305

October 21, 2015

VIA EMAIL: rwishner@ci.walnut.ca.us

Mr. Robert M. Wishner, City Manager
City of Walnut
21201 La Puente Road
Walnut, CA 91789

Re: Proposal to Provide Special Counsel Legal Services –Mt SAC Solar Project

Dear Mr. Wishner:

On behalf of LEIBOLD McCLENDON & MANN, P.C., I am pleased to submit this proposal to provide special counsel services to the City of Walnut in connection with Mt San Antonio College District's proposed solar project. I have very much enjoyed working with you, City staff and the City Council on the Lot 269 matter and other projects and am delighted by the opportunity to continue to provide services to the City of Walnut. We believe our firm's experience advising cities in connection with land use entitlements and all aspects of CEQA makes us a superior candidate to provide the requested services.

Scope of Services

Based on our preliminary discussions and initial review of the materials sent to me yesterday, I understand the services required include review and analysis of Mt SAC's proposed solar project, the requisite entitlement process and application or exemption from city land use regulatory authority pursuant to Proposition 39 and applicable Government Code provisions and case law. In addition, our office will coordinate with the City's CEQA consultant regarding compliance with CEQA and potential litigation. We will prepare such reports/memoranda as requested for presentation and discussion in closed session meetings as well as attend public meetings on an as needed basis. In the event the City Council elects to challenge the proposed solar project in court, we will brief the City Council on the options available and prepare and file such action as authorized and directed by the City Council.

Qualifications

Leibold McClendon & Mann will provide the City of Walnut with experienced attorneys and professional staff dedicated to serve the City's legal needs. While all of the firm's resources are available to serve the City of Walnut, we propose that John McClendon and I serve as principal counsel.

Robert M. Wishner, City Manager
City of Walnut
October 21, 2015
Page 2

As a principal of Leibold McClendon & Mann, I manage the firm's municipal law practice. I have twenty-eight years' experience representing cities and redevelopment agencies (now successor agencies) in all aspects of municipal law and am particularly knowledgeable in land use and planning matters.

John McClendon leads the firm's environmental law practice. His expertise in CEQA and land use law is recognized statewide. He takes particular pride in advising the firm's clients on procedural and substantive CEQA and land use compliance and in representing clients in CEQA litigation.

Fee Schedule and Reimbursables

We appreciate the fiscal constraints affecting most local governmental entities and recognize the need to efficiently and effectively serve public agency clients. Legal services to the City of Walnut will continue to be provided at our discounted public hourly rate of \$205 for attorneys and \$120 per hour for paralegals. The firm bills in increments of 1/10th of an hour.

The budget for the work related to Mt SAC's solar project will depend on the actual scope of services rendered, the meeting schedules, and the scope and nature of potential litigation.

Please note Leibold McClendon & Mann's new office address at 9841 Irvine Center Drive, Suite 230, Irvine, CA 92618. If you have any questions or concerns, please do not hesitate to contact me at 949-585-6300 ext. 101.

Very truly yours,

LEIBOLD McCLENDON & MANN, P.C.



By: Barbara Leibold

ATTACHMENT 2

Leibold McClendon & Mann - Amendment

P.O. Box 682, Walnut,
CA 91788-0682
21201 La Puente Road
Walnut, CA 91789-2018
Telephone (909) 595-7543
FAX (909) 595-6095
www.ci.walnut.ca.us



CITY OF WALNUT

This amendment is made to the exclusive agreement between the City of Walnut and Leibold McClendon & Mann for special legal services provided in connection with general municipal law to the City of Walnut made on September 3, 2014.

It is mutually understood and agreed by and between the undersigned contracting parties to amend the previously executed agreement as follows:

1. TERM is hereby extended until tasks described in Leibold McClendon & Mann proposal dated October 21, 2015, attached herein, are completed, but no later than December 31, 2016, unless otherwise extended or terminated, provided herein; and
2. PAYMENT is hereby revised to amount shall not exceed twenty-five thousand dollars (\$25,000.00) for the total term of the revised agreement unless additional payment is approved by the Walnut City Council.

All provisions of the original agreement, except as modified by this amendment, remain in full force and effect and are reaffirmed. If there is any conflict between this amendment and any provision of the original agreement, the provisions of this amendment shall control.

City of Walnut

By: _____
Robert M. Wishner, City Manager

Date: _____

Leibold McClendon & Mann

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
Teresa de Dios, City Clerk