



Chris Bazar
Agency Director

Agenda Item _____ May 7, 2019

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April 23, 2019

Honorable Board of Supervisors
Administration Building
Oakland, California 94612

Dear Board Members:

SUBJECT: APPROVE AMENDMENT NO. 2 TO CONTRACT NO. 8795 WITH TR ADVISORS, LLC TO PROVIDE BILLBOARD CONSOLIDATION AND RELOCATION SERVICES

RECOMMENDATION:

Approve Amendment No. 2 to Contract No. 8795 with TR Advisors, LLC (Principal: Lorna Moritz; Location: Boston, Massachusetts) due to delays in Billboard Consolidation and Relocation Services, extending the period of 5/15/2013 – 5/14/2019 by three years through 5/14/2022, decreasing the contract amount from \$2,000,000 to \$1,900,000 (\$100,000 decrease).

DISCUSSION/SUMMARY:

The Community Development Agency (CDA) has been working on a program to reduce and consolidate billboards since 2006. The effort arose from the community's concern regarding the number of billboards located in the urban unincorporated communities and led to your Board's adoption of the Billboard Ordinance in 2008 prohibiting billboards unless they were part of a relocation program. The concept is to significantly reduce the number of billboards in exchange for improved siting of several new billboards. Implementation of the Billboard Ordinance required subsequent revisions to the General Ordinance Code and three Specific Plans, all of which were approved by your Board in 2010. In addition to full review and approval by the Planning Commission, the Billboard Ordinance and resulting Billboard Consolidation and Relocation Program were reviewed by the Castro Valley Municipal Advisory Council, the Cherryland Community Association, the San Lorenzo Village Homeowner's Association, and the Board of Supervisors' Unincorporated Services Committee.

In September 2011, CDA received a final consultant report which catalogued every billboard in the urban unincorporated areas of the County; estimated their value; prioritized billboards for removal or relocation; identified sites for possible consolidation, renovation, expansion or new construction; and estimated the advertising revenues available from these sites. At a December 2011 Board of Supervisors' Retreat, CDA staff recommended a phased implementation that would focus on billboard reduction in the unincorporated communities; hiring of a consultant on a

commission-basis to develop a billboard reduction plan; and that the consultant be responsible for negotiating billboard relocation agreements that include revenue sharing and removal of existing billboards. Your Board supported the proposal, but project implementation was initially placed on hold with the dissolution of redevelopment.

On May 7, 2013 (Item No. 27), your Board approved a contract with TR Advisors LLC (TRA) to assist CDA with this work. In the TRA contract, the Scope of Services is divided into two phases: Phase One is to be implemented in the urban unincorporated County and includes the selection of up to five locations from ten possible sites for billboard consolidation. Phase Two, at the discretion of the County, would include County-owned properties located throughout the County. On March 21, 2017 (Item No. 16), your Board approved Amendment No. 1 to extend the term of the TRA contract.

Since the approval of the contract, TRA has conducted a competitive solicitation process with the two billboard companies (Outfront Media and Clear Channel) that own and operate billboards in the urban unincorporated County, negotiated a lease, and negotiated one draft Relocation Agreement with Outfront Media. Each company has been awarded two sites in the urban unincorporated County along commercial corridors where they may pursue approvals for the placement of new digital billboards. Outfront Media has submitted two billboard permit application to the County Planning Department and they are currently under review. Clear Channel expects to submit their two billboard permit applications in the near future. If billboard permits are approved by the County Planning Commission, the billboard permit application and the required Billboard Relocation Agreement will be presented to your Board for review and approval. The Billboard Relocation Agreement will include the number and location of the existing billboards to be removed, and also include the negotiated revenue sharing with the County.

The County and TRA anticipated that revenue generation would occur in the first three years of our contract with TRA. In recognition that the revenue generation to the County did not occur in the first three years of the contract with TRA, requiring a contract extension, the revenue sharing was renegotiated: 35% of the annual revenue generated to the County is paid to TRA, and 65% is retained by the County. The original contract allocated 75% of the annual revenue to TRA, and 25% to the County. It is anticipated that the four proposed new billboards, once all operating for a full year, would generate approximately \$280,000 per year, with the County retaining approximately \$180,000 annually. TRA is expected to be paid their fee over a ten-year period. In consideration for TRA's limited role in the billboard land use permit processing, the total compensation payable to TRA has been adjusted to reflect the not to exceed maximum for Phase One, and \$1,000,000 maximum for Phase Two, for a total of up to \$1,900,000.

SELECTION CRITERIA AND PROCESS:

In October 2012, a Request for Proposals (RFP) was advertised directly to twenty-five firms by CDA staff. Additionally, General Services Agency (GSA) Purchasing promoted the RFP on its website as well as through an email to over 2,000 firms. CDA staff held two bid conferences: one in Oakland on November 26, 2012 and one in Hayward on November 27, 2012. Two bids were received: one from TRA and one from Sign Value. Neither bidder included Small, Local or Emerging (SLEB) sub-contracting in its proposal. TRA was determined to be the best fit for the desired services due to their experience with all facets of billboard relocation, consolidation, and entitlements. During contract negotiations, CDA advised TRA to make best efforts to partner

with SLEB sub-contractors. TRA has added three (3) SLEB sub-contractors, which include: Thomas E. Dum Real Estate Appraisers (SLEB: 1%) (Principal: Ed Dum; Location: Alameda); Redwood Consulting Associates (SLEB: 0-3%) (Principal: Linda DeBolt; Location: Oakland); and Lai & Associates (SLEB: 0-1%) (Principal: Paul Lai; Location: Pleasanton) to their proposal, and have agreed to sub-contract 100% of the non-commission-based work. However, the majority of TRA's fee is based upon commission-based work, and the available sub-contractor work is minimal. Although the original contract included a SLEB requirement for 1-5% of the total contract amount, no work has been done on the relevant areas of the contract to date. SLEB Waiver (#5719) has been approved by the General Services Agency (GSA) – Office of Acquisition and Procurement for the entire contract. The SLEB Waiver expires on 5/14/22.

FINANCING:

TRA will be paid their commission fee only from newly-generated proceeds received by the County, i.e. not from existing County funds. CDA anticipates this contract will generate revenue within three years. In the event that no billboard agreements are secured by the contract's term, the County will pay third-party expenses incurred under this contract. If needed, this payment shall not exceed \$100,000 (up to \$50,000 for Phase One and up to \$50,000 for Phase Two) and funding will be included within the Agency's planned budget. There is no increase in Net County Cost.

VISION 2026 GOAL:

Billboard consulting services for the urban unincorporated areas of the County meet the 10X goal pathway of **Accessible Infrastructure** in support of our shared vision of **Prosperous and Vibrant Economy**.

Very truly yours,



Chris Bazar, Director
Community Development Agency

cc: Susan S. Muranishi, County Administrator
Donna R. Ziegler, County Counsel
Melissa Wilk, Auditor-Controller
Pete Coletto, County Administrator's Office
Andrea L. Weddle, Office of the County Counsel
Sandra Rivera, Community Development Agency

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement (“Second Amendment”) is made by the County of Alameda (“County”) and TR Advisors, LLC, (“Contractor”) with respect to that certain agreement entered into by them on May 15, 2013 (referred to herein as the “Agreement”), as amended by that First Amendment to Agreement dated March 21, 2017, pursuant to which Contractor provides Billboard Consolidation & Relocation Program Services to County.

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Contractor agree to amend the Agreement in the following respects:

1. Except as otherwise stated in this Second Amendment, the terms and provisions of this Amendment will be effective as of the date this Second Amendment is executed by the County (“Effective Date”).
2. The term of the Agreement is currently scheduled to expire on May 14, 2019. As of the Effective Date, the term of the Agreement is extended through May 14, 2022.
3. Paragraph 13, Notices, of the Agreement is amended to include the following current address for purpose of giving notice to Contractor:

TR Advisors, LLC
77 Franklin St., 4th Floor
Boston, MA 02110
Attn: Lorna Moritz
4. In consideration for Contractor’s renegotiated services for Phase I, the County shall pay Contractor in a reduced amount not to exceed Nine Hundred Thousand dollars (\$900,000) for Phase I. Contractor payment shall remain One Million dollars (\$1,000,000) for Phase II. As a result of this change, the not to exceed amount has decreased from Two Million

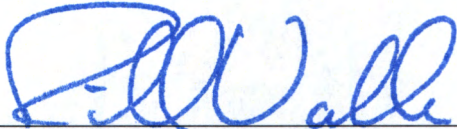
dollars (\$2,000,000) to One Million Nine Hundred Thousand dollars (\$1,900,000) over the term of the Agreement and any amendments.

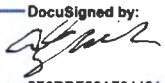
5. A Revised Exhibit B-1, Payment Terms, is attached to this Second Amendment and incorporated by this reference.
6. Exhibit E, Contract Compliance Reporting Requirements, is attached to this Second Amendment and incorporated by this reference.
7. Exhibit O, The Iran Contracting Act of 2010 Certification, is attached to this Second Amendment and incorporated by this reference.
8. **DEBARMENT AND SUSPENSION CERTIFICATION:**
 - a. By signing this Second Amendment and Exhibit D, Debarment and Suspension Certification, which is attached and incorporated by this reference, Contractor agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this Second Amendment, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
9. Except as expressly modified by this Second Amendment, all of the terms and conditions of the Agreement are and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

TR ADVISORS LLC


By: 
Richard Valle
President of the Board of Supervisors

DocuSigned by:

By: _____
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Douglas R. Herberich
Managing Principal & CEO

Date: 4/18/2019

Approved as to Form:

Donna R. Ziegler, County Counsel

DocuSigned by:

By: _____
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Andrea L. Weddle
Chief Assistant County Counsel

By signing above, signatory warrants and represents that he/she executed this First Amendment to Agreement in his/her authorized capacity and that by his/her signature on this First Amendment to Agreement, he/she or the entity upon behalf of which he/she acted, executed this First Amendment to Agreement

**REVISED EXHIBIT B-1
PAYMENT TERMS**

1. Except as expressly modified by this Exhibit B-1, all of the terms and conditions of the Exhibit B - Payment Terms are and remain in full force and effect.
2. County will pay Contractor upon successful completion and acceptance of the services listed in Exhibit A, within thirty (30) days, upon receipt of invoice. Invoices shall be submitted commensurate with the schedule of payments of Gross Revenue to the County under any billboard agreement.

In consideration of the work performed hereunder, Contractor shall be paid a fee in the amount of thirty-five percent (35%) of the Gross Revenues, as defined herein (the Contractor's Fee"). Gross Revenues shall be defined as the value of all cash and (in the event that billboard agreements result in County ownership of billboards after the term of an agreement) "fifty percent (50%) of the initial capital cost of the billboard structure, as reported on the building permit for each billboard structure."

Gross Revenue shall not include any rent payments made to the County for the Langton Way billboard lease. Non-cash consideration shall not include in-kind advertising benefits to the County. Gross Revenues shall also include Linkage Fees, defined as any payment made to the County in lieu of or in addition to rent or license fees for the right to install a new billboard structure under the Billboard Consolidation and Relocation Program. Linkage Fees shall not include entitlement permit application fees paid separately to the County Planning or Public Works Departments.

The Contractor's Fee is deemed fully earned at the time of the execution by the County of each billboard agreement resulting from this Agreement, and will be paid as County receives each installment of Gross Revenues under each billboard agreement up to Contractor's maximum total compensation hereunder. The County's obligation to compensate Contractor, for as long as County billboard agreement resulting from this Agreement continues to generate Gross Revenue to the County and Contractor's maximum total compensation has not yet been attained, shall survive the termination of the Agreement.

Calculation of Working Capital shall be as provided for in the original Exhibit B.

3. Invoices will be approved by the Community Development Agency.
4. Total compensation under the terms of this Agreement, as amended, will not exceed the total amount of One Million Nine Hundred Thousand Dollars

(\$1,900,000) for the term of this Agreement: Nine Hundred Thousand Dollars (\$900,000) maximum fee for Phase I, and One Million Dollars (\$1,000, 0000) maximum fee for Phase II.

5. Total payment under the terms of this Agreement will not exceed the total amount of One Million Nine Hundred Thousand Dollars (\$1,900,000) for the term of this Agreement: Nine Hundred Thousand Dollars (\$900,000) maximum for Phase I for up to five (5) transactions; and One Million Dollars (\$1,000,000) maximum fee for Phase II. This cost includes all taxes and all other charges. The County and Contractor may mutually agree to extend the number of transactions and the Contract cap subject to County Board of Supervisors approval.

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named or unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessary result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: TR Advisors, LLC

Principal: Douglas B. Herberich, Managing Principal & CEO

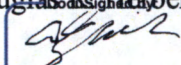
SIGNATURE:  DATE: 4/18/2019
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EXHIBIT E

**COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

County project managers will provide a special access code to contractors and subcontractors participating in this contract to allow use of the Elation Systems free of charge.

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within five business days in the System, immediately enter payments made to subcontractors, and ensure that subcontractors confirm they received payments within five business days in the System. Subcontractors shall confirm their payments received from the prime contractor within five business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. For the training schedule, please call Elation Systems at (925) 924-0340.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

EXHIBIT O

COUNTY OF ALAMEDA

THE IRAN CONTRACTING ACT (ICA) OF 2010

For Procurements of \$1,000,000 or more

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who “engages in investment activities in Iran” is defined in either of two ways:

1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of bidding or proposing for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to bid or submit a proposal or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception: _____

CONTRACTOR: TR Advisors, LLC

PRINCIPAL: Douglas R. Herberich, Managing Principal & CEO

SIGNATURE:  DATE: 4/18/2019
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