DATE: January 15, 2019

TO: City Council

FROM: Ashley Golden
Development Services Director

SUBJECT: Second Amendment to Agreement for On-Call Permit Processing and Planning Services and Associated Budget Appropriation (5/5/5)

CONTACT: Ashley Golden, Development Services Director
Ashley.Golden@oxnard.org, (805) 385-7882

RECOMMENDATION:

That City Council:
1. Approve and authorize the Mayor to execute the Second Amendment with Rincon Consultants, Inc., extending Agreement #7690-16-DS for two years and increasing the contract amount by $450,000 for a new agreement total of $950,000; and
2. Approve an appropriation from General Fund Reserve in the amount of $75,000 to provide funding in FY 2018-2019 for professional services.

BACKGROUND

The City issued a Request for Qualifications (RFQ) in August 2016 for on-call permit processing and planning services. Four firms responded and Rincon Consultants, Inc. (Rincon) was selected based on their extensive work with the City as well as their breadth and diversity in available staff. The on-call agreement with Rincon will expire in June 2019 and currently has a not to exceed contract amount of $500,000. The various funding sources used to pay for this agreement include the General Fund, General Plan Maintenance Fee revenue (GPMF), planning development permit fees and deposits, and funding from other City departments for specific city projects. Expenses from February 2017, when the agreement went into effect, thru October 2018 total $418,858. Of the $418,858 39% of the costs are General Fund projects, 36% planning development permit fees/deposits, 20% GPMF, and 5% other City departments.

The FY 2018-19 Adopted Budget for Planning’s Professional/Contract services line item is
$137,947. This represents a reduction of $79,741 compared to the FY 2017-18 budget of $217,688. Besides the on-call permit processing agreement with Rincon, the current budget is also used for professional services agreement for contract planning:

1. Harbor/Fisherman’s Wharf Project (RRM);
2. Architectural review services (Johnson + Muller);
3. Landscape architectural review (Brodersen Associates and Jordan, Gilbert & Bain);
4. Ormond Beach coordinator services (Pollinate);
5. Cannabis Management program services (HdL);
6. Cultural heritage review (County of Ventura); and
7. Onsite posting services (Ron’s Signs).

In January 2019, the City will secure an additional professional services contract through a request for qualifications for fiscal impact analysis services, which is required by State Density Bonus Law. This service will further exacerbate the deficient contract line item, however the services is reimbursed by the developers.

The current operating budget of $137,947 is insufficient to absorb all anticipated, and need, consultant costs. The shortfall is related to a variety of needs including long range planning, development projects, staffing shortages, as well the continuation of Cannabis related work through Fiscal Year (FY) 20, and the inability to “carry over” $31,775 in FY 17-18 that Council approved on May 15, 2018 for Cannabis Management consulting services. This Cannabis work will continue into FY 19-20. The Planning Division continues to experience a significant number of development planning permits, with many permits having very aggressive processing timelines, as approved within associated Development Agreements.

A number of complex projects such as Short Term Vacation Rentals, the Local Coastal Plan Update, mid cycle Housing Element review, regional planning support documentation in support of the upcoming 6th cycle for the Housing Element update, preparatory work associated with the Census, Energy Programming grants, and Puente Power Plant work and support, have resulted in the need to shift projects and utilize contract planning staff. Rincon Consultants, Inc. has the ability to process planning permits that are above and beyond the typical workload of Planning Division staff. In addition, where planning and environmental support in other city departments is requested, such as Housing and Public Works, Rincon is able to provide these services.

Rincon’s work is funded through the General Fund (GF), General Plan Maintenance Fund (GPMF), and other City Departments (Other Depts.). They are currently assisting with:

1. Housing Element update and required yearly reporting (required by State law and California Department of Housing and Community Development) (GPMF);
2. 2030 General Plan rezoning program (required by State law) (GPMF);
3. Downtown Development Code environmental analysis and documentation (GPMF);
4. Local Coastal Plan Update consultation (GPMF);
5. Projection of transportation growth needs by zone for the Regional Transportation Program/Sustainable Communities Strategies requirement by Southern California Association of Governments (SCAG mandate) (GF);

6. Housing Related Parks (HRP) grant (approximately $3 million received in park grant funds as a result of work) (Other Depts.);

7. Review of federal environmental document monitoring and reporting requirements; environmental document preparation; and peer review of environmental studies (Other Depts.).

8. Contract planning staff is also utilized to work on development projects which are funded through developer deposits, such as Wagon Wheel, Topa Financial Towers, Etting Road (Cabrillo Development Project), RiverPark, and Pleasant Valley/Etting Rd. (Daly’s development projects) to name a few projects. Rincon staff are currently processing approximately 18-20 development projects. For a comparison, this is nearly equivalent to one full time senior planner. Most of these projects are deposit based permits, which means that a deposit plus 15% is required and received to fully recover all consultants costs expended on these development projects, and cover the City’s administrative costs associated with these development projects.

Development activity in the City has significantly increased in 2018. As a comparison, there are 24 more residential projects compared to 2015; 14 more commercial projects (1.6 million square feet) compared to 2015; and roughly 4.1 million more industrial square footage of development projects compared to 2015. In terms of staffing, staffing levels in the Planning Division are the lowest in the County and haven’t increased since 2012.

STRATEGIC PRIORITIES

This agenda item supports the Economic Development strategy. The purpose of the Economic Development strategy is to develop and enhance Oxnard’s business climate, promote the City’s fiscal health, and support economic growth in a manner consistent with the City’s unique character. This item supports the following goals and objectives:

Goal 1. Create vibrant and economically sustainable commercial, industrial and retail industries throughout the City.
   Objective 1a. Focus available resources on a comprehensive effort to promote economic activity in Oxnard, including a marketing program that communicates the City’s available resources and assets.

Goal 2. Enhance business development throughout the City.
   Objective 2a. Develop a strong citywide economy which attracts investment, increases the tax base, creates employment opportunities, and generates public revenue.

Goal 3. Enhance business retention and attraction.
   Objective 3a. Implement an economic development plan for attracting and retaining business.
FINANCIAL IMPACT

The Second Amendment will increase the cost of the agreement by $450,000 for a total of $950,000, and will continue to be funded by a combination of the General Fund, developer deposits, and General Plan Maintenance Fund fee revenue. Additionally, General Plan Maintenance Fees are annually appropriated to the Local Coastal Plan Update (Project 14IN01) and Housing Element Update (Project 14IN03) to cover costs of Rincon’s services related to these projects. Based on services rendered, expenses will be charged to the corresponding operating budget or related projects to cover the costs. Expenses will also be charged to various other funded projects or deposit accounts.

The appropriation of $75,000 from General Fund Reserves will increase the consulting from $137,947 to $212,947. With this recommendation, the estimated FY 2018-19 General Fund Unreserved / Unassigned Fund Balance is $15.56 million or 11% operating reserve. However, without this appropriation the Planning Division will not be able to meet state compliance requirements for permit processing and long range planning activities. The planning permit revenue is at 60% of budget at 46% through the year. The revenue will help to off-set the appropriation.

Prepared by: Kathleen Mallory, Planning & Environmental Services Manager, and Sabrina Rodriguez, Management Analyst III.

ATTACHMENTS:

Rincon Second Amendment

Planning BA 01.08.19
SECOND AMENDMENT TO AGREEMENT FOR CONSULTING SERVICES

This Second Amendment ("Second Amendment") to the Agreement for Consulting Services ("Agreement") is made and entered into in the County of Ventura, State of California, this __________ day of __________, 20___, by and between the City of Oxnard, a municipal corporation ("City"), and Rincon Consultants, Inc. ("Consultant"). This Second Amendment amends the Agreement entered into on February 7, 2017, by City and Consultant. The Agreement previously has been amended on July 18, 2017, by a First Amendment.

City and Consultant agree as follows:

1. In Section 12, Term of Agreement, the date “June 30, 2019” is replaced by the date “June 30, 2021”.

2. In subsection a of Section 14 of the Agreement, the figure “$500,000.00” is deleted and replaced by the figure “$950,000.00”.

3. Section 21 of the Agreement, Indemnity, is deleted and replaced with the following:

   "Hold Harmless, Indemnity and Defense

   a. If Consultant provides any architectural, landscape architectural, engineering or land surveying services:

      (1) Consultant shall (1) immediately defend; (2) indemnify; and (3) hold harmless City, its City Council, each member thereof, and its directors, officers, and employees (the "Indemnified Party") from and against all liabilities regardless of nature, type or cause to the extent that the liabilities arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, or its employees, agents or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, allegations, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys’ fees; court costs; and costs of alternative dispute resolution (singularly a "Claim" and collectively the "Claims").

      (2) The duty to defend is a separate and distinct obligation from Consultant’s duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Indemnified Party to the extent required by the paragraph above immediately upon tender to Consultant of the Claim in any form or at any stage of an action or proceeding. An allegation or determination that persons other than Consultant are responsible for the liability shall not relieve Consultant from its separate and distinct obligation to defend the Indemnified Party to the extent required by the paragraph above. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel if Consultant asserts that the liability is caused in whole or in part by the negligence or willful misconduct of the Indemnified Party."
b. If Consultant does not provide any architectural, landscape architectural, engineering or land surveying services as the Services in this Agreement:

(1) To the fullest extent permitted by law, Consultant shall (1) immediately defend; (2) indemnify; and (3) hold harmless the Indemnified Party from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with Consultant’s performance of this Agreement or Consultant’s failure to comply with any of its obligations contained in this Agreement. Liabilities subject to the duties to defend and indemnify include, without limitation, all Claims. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of the Indemnified Party, Consultant’s indemnification obligation shall be reduced in proportion to the established comparative liability of the Indemnified Party.

(2) The duty to defend is a separate and distinct obligation from Consultant’s duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Indemnified Party immediately upon tender to Consultant of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of negligence or willful misconduct by the Indemnified Party shall not relieve Consultant from its separate and distinct obligation to defend the Indemnified Party. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the Indemnified Party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of the Indemnified Party, Consultant may submit a claim to City for reimbursement of reasonable attorneys’ fees and defense costs.”

c. For services under both 21a and 21b, the review, acceptance or approval of Consultant’s work or work product by the Indemnified Party shall not affect, relieve or reduce Consultant’s indemnification or defense obligations. This Section shall survive completion of the Services or termination of this Agreement. The provisions of this Section shall not be restricted by and do not affect the provisions of this Agreement relating to insurance.”

4. Section 36 of the Agreement is deleted in its entirety and replaced with the following:

“Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.”

5. As so amended, the Agreement remains in full force and effect.

[Signatures on next page]
CITY OF OXNARD

Tim Flynn, Mayor\(^1\) Date

ATTEST:

Michelle Ascencio, City Clerk Date

CONSULTANT

Joe Power, Vice President\(^2\) Date

Lacissa Davis, CFO Date

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney Date

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\(^1\) The City Council must authorize and the Mayor must sign the amendment if the original contract and all amendments collectively total over $175,000 annually. The City Manager may authorize and sign the amendment if the original contract and all amendments collectively total over $100,000 but up to $175,000 annually. The Purchasing Manager may authorize and sign the amendment if the original contract and all amendments collectively total up to $100,000 annually. A Buyer may authorize and sign the amendment if the original contract and all amendments collectively total up to $25,000 annually.

\(^2\) The City requires the following for any contract:
- For a corporation, the signatures of the Board President, CEO or Vice President and of the Board Secretary, Assistant Secretary, CFO or Assistant Treasurer;
- For an LLC, the signatures of at least two managers of the LLC; or
- For a partnership, the signature of a partner. If the partnership is a limited partnership, the signer must be a general partner.

If the company has a different structure, or if the above-listed persons are not the appropriate signers, please submit to the City Attorney legally-binding documentation stating who can sign and bind your company.
REQUEST FOR BUDGET APPROPRIATION

Department: Development Services  Date: January 8, 2019  
Project/Program  
Manager: Kathleen Mallory  Phone: 385-8370

Reason for Appropriation:
To appropriate funds to Planning Division operating line item for consulting services.

<table>
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<th>Accounts and Descriptions</th>
<th>AMOUNT</th>
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Expenditures/Transfers Out

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<th>LAND USE PLAN &amp; ENV PROTC</th>
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<td>101-4101-804-8209 Svcs-Other Prof/Contract</td>
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Sub-total Expenditures 75,000

Net Change to Fund Balance  (75,000)

Net Appropriation Change 75,000

Approvals

Department Director  
Chief Financial Officer  
City Manager  

REQUIRES CITY COUNCIL AUTHORIZATION
Second Amendment to Agreement for On-Call Permit Processing and Planning

City Council: January 8, 2019
Kathleen Mallory
Planning & Environmental Services Manager
On-call agreement with Rincon will expire in June 2019

Fiscal Year 2018-19 Adopted Budget for Planning Professional/Contract Services is $137,947

Previous FY budget was $217,688
  • Reduced $79,741 from FY 2017-18

Professional/Contract Services includes seven contracts
  • One additional contract to be executed in early 2019
Budget of $137,947 is insufficient

1. Reduced $79,741 since FY 17-18

2. Inability to carry over funding/cannabis management program from a May 2018 appropriation

3. Long range planning work/state mandates

4. Projects with aggressive processing timelines

5. Increased volume of development planning permits since 2015
   - 24 more residential projects
   - 14 more commercial projects (1.6 million square feet)
   - 4.1 million more industrial square footage
FINANCIAL IMPACT

• Second Amendment increases the agreement by $450,000, for a total of $950,000
• Appropriation of $75,000 from General Fund Reserves
  ○ Increases the consulting budget from $137,947 to $212,947
• Amendment funded by a combination of the General Fund, developer deposits, and General Fund Maintenance fee revenue
  ○ The planning permit revenue is at 60% of budget at 46% through the year.
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