



REPORT TO CITY COUNCIL

Approved by:



Darrell Unruh, Interim Planning Manager



Arnaldo Rodriguez, City Manager

Council Meeting of: April 1, 2020

Agenda Number: D-2

SUBJECT:

Consideration of adopting Resolutions approving agreements for Planning, Zoning, and Environmental Review Consultant Services and on-call City Planning Services with the following firms:

1. Rincon Consultants, Inc., not to exceed \$50,000; and
2. Provost & Pritchard Consulting Group, not to exceed \$50,000

RECOMMENDATION:

It is recommended that the City Council (Council) adopt the resolutions approving the two agreements, one with Rincon Consultants, Inc. and the other with Provost & Pritchard Consulting Group, to assist the City's planning staff in the conduct of analysis and preparation of reports pertaining to planning, zoning, entitlement review, and environmental review (CEQA) applications and processes.

SUMMARY:

The Planning Department is in need of professional planning services to assist staff in the analysis, evaluation, and preparation of recommendations pertaining to the development and use of properties in accordance with the City's applicable plans, policies, ordinances, and development standards. With recent reductions in planning staff, the remaining staff is unable to provide an appropriate and desirable level of service to the community, Planning Commission, and the Council.

The City has continued to receive land use entitlements for the development and use of properties, which involve the evaluation and consideration of planning and zoning land use applications and attendant environmental review and preparation of documentation. These processes are conducted in accordance with applicable State and Municipal laws, ordinances, and policies to promote the health, safety, and welfare of the community and its residents. The City has also consistently focused efforts and resources to provide a high level of service to its

residents and businesses. These efforts have resulted in notable development of new housing, expanded commercial opportunities, and job creating industrial growth.

In order to continue to provide a high level of service necessary to meet expectations of the community and the Council, Planning staff, at the direction of the City Manager, has solicited written proposals from the local offices of three planning and engineering firms. These firms are active and well regarded within the region and include Rincon Consultants, Inc., Provost & Pritchard Consulting Group, and Precision Civil Engineering, Inc. Staff is requesting approval to enter into professional services agreements with two of the firms, Rincon Consultants, Inc., and Provost & Pritchard Consulting Group, at this time.

The two agreements will be for planning, zoning, and environmental review and report preparation performed as directed by the City's planning staff and the City Manager. These services will be provided by the consulting firms in accordance with agreements prepared as directed and approved by the City Attorney. The total value of each agreement shall not exceed \$50,000.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

The recommended agreements are a required part of the review and approval process for a development project. As such, approval of the agreements is consistent with the City's vision statements for "a well-planned city" and "good jobs and economic opportunity."

FINANCIAL IMPACT:

The cost of these professional consulting services will be born in part by fees paid by applicants of land use and development entitlements together with salary savings from the budgeted but vacant staff allocations.

ALTERNATIVES:

As an alternative to staff's recommendation, the Council may:

1. Direct staff to obtain proposals from other firms.
2. Approve the agreements for smaller amounts.
3. Request that staff clarify or provide additional information.

ATTACHMENTS:

1. Resolution approving an agreement with Rincon Consultants, Inc. not to exceed \$50,000
 - a. Agreement with Rincon Consultants, Inc. for contract planning
2. Resolution approving an agreement with Provost & Pritchard Consulting Group not to exceed \$50,000
 - a. Agreement with Provost & Pritchard for contract planning

1. Resolution approving an agreement with Rincon Consultants, Inc. not to exceed \$50,000
 - a. Agreement with Rincon Consultants, Inc. for contract planning

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
APPROVING AN AGREEMENT WITH RINCON CONSULTANTS, INC.
FOR PLANNING AND ENVIRONMENTAL REVIEW SERVICES
RELATING TO IMPLEMENTATION OF THE CITY'S ADOPTED PLANS,
POLICIES, AND ZONING REGULATIONS AND AUTHORIZING THE
MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY**

WHEREAS, the City is processing numerous applications for land use and development entitlements within the City (the "Project"); and

WHEREAS, the City is in need of land use planning and environmental review services in connection with its efforts to assure compliance with applicable standards, policies, and laws; and

WHEREAS, Rincon Consultants, Inc. is a firm that is qualified to provide professional environmental planning services (the "Services"); and

WHEREAS, City staff solicited proposals from local professional Planning firms experienced with land use regulations and preparation of environmental documentation in accordance with the California Environmental Quality Act; and

WHEREAS, City has prepared an Agreement for services with Rincon Consultants, Inc. ("Agreement") and such Agreement is in the best interests of both parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA hereby finds, determines, resolves and orders as follows:

1. The recitals listed above are true and correct.
2. The Agreement with Rincon Consultants, Inc., not to exceed \$50,000, for professional planning and environmental review services related to applicable standards, policies and laws, a copy of which is attached as Exhibit 1 to this resolution, is hereby approved.
3. The Mayor is authorized to execute the Agreement on behalf of the City.
4. This resolution is effective immediately upon adoption.

* * * * *

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made and entered into the 2nd day of April, 2020, by and between Rincon Consultants, Inc. (“Firm”) and the City of Madera (“City”).

RECITALS

- A. The City has an immediate need for professional planning consultant services due to unexpected vacant positions in the City’s Planning Department.
- B. Firm has the professional competence, experience, and qualifications to provide professional planning services required by City.
- C. City desires to retain Firm to provide said services.

AGREEMENT

1. Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.

2. Services. The City hereby contracts with Firm to provide services herein set forth at the compensation and upon the terms and conditions herein expressed, and Firm hereby agrees to perform such services for said compensation, and upon said terms and conditions. City hereby authorizes Firm to commence work immediately upon approval of this agreement by the City Council at a scheduled meeting of said governing body.

3. Obligations, duties and responsibilities of Firm. It shall be the duty, obligation and responsibility of the Firm, in a skilled and professional manner, to perform the services in accordance with the Scope of Work identified in Exhibit A.

4. Compensation. City shall compensate Firm for professional services at the appropriate rate indicated in the Rincon Standard Fee Schedule for Environmental Sciences and Planning Services for consulting services.

5. Assignment of Personnel. Rincon Consultants, Inc., will provide project manager, Eric VonBerg, and any additional qualified individual(s) to assist City’s Planning Department and will be assigned subject to the approval of the Planning Manager or City Manager.

6. Billings and Payments.

6.1 Firm shall submit a billing statement which will include services by Firm provided monthly in arrears, no later than the tenth of the month following the month service was rendered. The billing statement shall be submitted to the City’s designee.

6.2 Billings are to be made directly to the following address:

City of Madera
Attn: Arnaldo Rodriguez
205 W. 4th Street
Madera, CA 93637

6.3 The billing statements shall be prepared and organized in a manner that facilitates an efficient review of the services performed.

6.4 City shall make payments monthly based on a monthly itemized billing statement for the previous month. City shall make its best effort to process payments promptly and not later than 30 days after receiving Firm's monthly billing statement.

7. Term and Termination.

7.1 This Agreement shall be effective on April 2, 2020, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect unless otherwise terminated earlier by one of the parties. Firm may be contacted following termination of the Agreement for clarification and consultation on matters covered during performance of the scope of services. Any such contact will be billed in accordance with Section 4 of this Agreement.

7.2 City reserves the right to discharge Firm and terminate this Agreement at any time. In the event of such discharge or termination, the City shall compensate Firm for services rendered up to and including the date of termination. City shall terminate services and/or the Agreement by delivering to Firm a written notice specifying the extent to which services and/or the Agreement are terminated and the effective date of the termination. Notice of termination shall be emailed as follows:

Rincon Consultants, Inc.
Richard Daulton, Principal / Vice President
RDaulton@rinconconsultants.com

7.3 Firm may terminate this Agreement at any time by giving the City not less than fifteen (15) days prior written notice. Notices required under this section shall be emailed as follows:

City of Madera
Arnaldo Rodriguez, City Manager
arodriguez@madera.gov

8. Insurance and Indemnification.

8.1 During the term of this Agreement, Firm shall maintain, keep in force, and pay all premiums required to maintain and keep in force the policies and limits of such policies as required in Exhibit B of this Agreement.

8.2 To the furthest extent allowed by law, Firm shall indemnify, hold harmless, and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage), and from any and all claims, demands, and actions in law or equity (including reasonable attorney's fees and litigation expense) that arise out of, pertain to, or related to the negligence, recklessness, or willful misconduct of Firm, its principals, officers, employees, agents, or volunteers in the performance of this Agreement. The obligations under this paragraph are in addition to, and are not limited by any insurance which Firm is otherwise required to maintain under this Agreement.

9. Independent Contractor. In performance of the work, duties and obligations assumed by Firm under this Agreement, it is mutually understood and agreed that Firm, including any and all of Firm's officers, agents, and employees, will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as servant, employee, agent, partner, or associate of City. Because of its status as an independent contractor, Firm and its employees shall have absolutely no right to employment rights and benefits available to City employees. Firm shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Firm shall be solely responsible and hold City harmless from all matters related to payment of Firm's employees, including compliance with social security, withholding, and all other regulations governing such matters.

10. Hiring of Consultant's Associates and/or Subcontractors. City agrees that each of Consultant's associates and/or subcontractors will only be able to obtain a direct contract or professional services agreement with the City, only after the expiration of the contract or professional services agreement with Consultant AND only after 2 years from the expiration date of the contract or professional services agreement with Consultant. City agrees to hire one of Consultant's associates and/or subcontractors as a full time, permanent, fully benefited employee of the City, only after City has performed a recruitment AND the associate and/or subcontractor has billed 960 hours to the City. If City employs Consultant's associates and/or subcontractors through another temporary service or staffing agency, City agrees to pay a fee of 10% of the associate and/or subcontractor's annualized wages based on the hourly rate charged, to Consultant.

11. Compliance with Law. Firm shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, and directives, and all provisions required to be included are incorporated by reference.

12. Miscellaneous.

12.1 Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

12.2 Governing Law. The parties agree that this Agreement shall be governed and constructed by and in accordance with the Laws of the State of California.

12.3 Required License and Professional Credentials. Firm and personnel providing services shall maintain all licenses and professional credentials necessary for the provision of such services. Firm shall promptly notify City of changes of status or events that might impact the provision of professional services to City.

12.4 Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.

12.5 Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

12.6 Incorporation of Documents. All documents constituting the Agreement documents described in Section 3 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.

12.7 Integration. This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties. There are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.

12.8 Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.

12.9 Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

12.10 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.

12.11 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

12.12 Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Madera or in the United States District Court for the Eastern District of California.

12.13 Recovery of Costs. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

13. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Firm and the City.

RINCON CONSULTANTS, INC.

CITY OF MADERA

Richard Daulton
Principal / Vice President

Andrew J. Medellin, Mayor

Date: _____, 2020

Date: _____, 2020

ATTEST

APPROVED AS TO FORM

Alicia Gonzales, City Clerk

Hilda Montoy, City Attorney

Date: _____, 2020

Date: _____, 2020

EXHIBIT A

SCOPE OF SERVICES

Firm will provide professional planning services tailored specifically to meet the needs of each individual project. It is anticipated that Firm's planners will provide the following functions as an extension of City staff:

1. Reviewing and accepting planning applications and answering questions from members of the community, stakeholder groups, developers, or other interested parties on applications we are processing
2. Holding office hours at City Hall, if necessary for a particular project, including attendance at evening Planning Commission and/or City Council meetings
3. Analyzing development projects for compliance with the City's General Plan, specific plans, Zoning Ordinance, and other policies
4. Preparing staff reports, approval/denial findings, resolutions, and conditions of approval for discretionary applications and review and processing of ministerial applications
5. Attending and giving oral presentations at Planning Commission and/or City Council meetings, neighborhood councils, or other stakeholder organizations
6. Reviewing project applications for completeness and providing constructive input to applicants in a timely manner consistent with the Permit Streamlining Act
7. Administering condition compliance, building and safety plan check, and mitigation monitoring and reporting programs

EXHIBIT B

INSURANCE REQUIREMENTS

Insurance Requirements.

Without limiting Firm's indemnification of City, and prior to commencement of Work, Firm shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Sub-consultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance:

Firm shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products, and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage should be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **\$1,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Firm arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Workers' Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Firm shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim in the aggregate. Firm shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Firm agrees to maintain continuous coverage through a period of no less than three years after completion of services required by this Agreement.

Maintenance of Coverage.

Firm shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Firm, its agents, representatives, employees, subcontractors, or sub-consultants as specified in this Agreement.

Proof of Insurance.

Firm shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers.

All insurance policies shall be issued by an insurance company currently authorized by the insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation.

All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Firm, or others providing insurance evidence in compliance with these specifications, to waive their right to recovery prior to a loss. Firm hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its sub-consultants or subcontractors.

Enforcement of Contract Provisions (non estoppel).

Firm acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Firm of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications not Limiting.

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Firm maintains

higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Firm.

Notice of Cancellation.

Firm agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

Self-insured Retentions.

Any self-insured retentions must be declared to and approved by City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

Timely Notice of Claims.

Firm shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Firm's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance.

Firm shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

2. Resolution approving an agreement with Provost & Pritchard Consulting Group
not to exceed \$50,000
 - a. Agreement with Provost & Pritchard for contract planning

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
APPROVING AN AGREEMENT WITH PROVOST & PRITCHARD
CONSULTING GROUP FOR PLANNING AND ENVIRONMENTAL
REVIEW SERVICES RELATING TO IMPLEMENTATION OF THE CITY'S
ADOPTED PLANS, POLICIES, AND ZONING REGULATIONS AND
AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON
BEHALF OF THE CITY**

WHEREAS, the City is processing numerous applications for land use and development entitlements within the City (the "Project"); and

WHEREAS, the City is in need of land use planning and environmental review services in connection with its efforts to assure compliance with applicable standards, policies, and laws; and

WHEREAS, Provost & Pritchard Consulting Group is a firm that is qualified to provide professional environmental planning services (the "Services"); and

WHEREAS, City staff solicited proposals from local professional Planning firms experienced with land use regulations and preparation of environmental documentation in accordance with the California Environmental Quality Act; and

WHEREAS, City has prepared an Agreement for services with Provost & Pritchard Consulting Group ("Agreement") and such Agreement is in the best interests of both parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA hereby finds, determines, resolves and orders as follows:

1. The recitals listed above are true and correct.
2. The Agreement with Provost & Pritchard Consulting Group, not to exceed \$50,000, for professional planning and environmental review services related to applicable standards, policies, and laws, a copy of which is attached as Exhibit 1 to this resolution, is hereby approved.
3. The Mayor is authorized to execute the Agreement on behalf of the City.
4. This resolution is effective immediately upon adoption.

* * * * *

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made and entered into the 2nd day of April, 2020, by and between Provost and Pritchard Consulting Group (“Firm”) and the City of Madera (“City”).

RECITALS

- A. The City has an immediate need for professional planning consultant services due to unexpected vacant positions in the City’s Planning Department.
- B. Firm has the professional competence, experience, and qualifications to provide professional finance and accounting services required by City.
- C. City desires to retain Firm to provide said services.

AGREEMENT

1. Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.

2. Services. The City hereby contracts with Firm to provide services herein set forth at the compensation and upon the terms and conditions herein expressed, and Firm hereby agrees to perform such services for said compensation, and upon said terms and conditions. City hereby authorizes Firm to commence work immediately upon approval of this agreement by the City Council at a scheduled meeting of said governing body.

3. Obligations, duties and responsibilities of Firm. It shall be the duty, obligation and responsibility of the Firm, in a skilled and professional manner, to perform the services in accordance with the Scope of Work identified in Exhibit A.

4. Compensation. City shall compensate Firm for professional services at the rate of according to the 2020 Standard Fee Schedule for consulting services.

5. Assignment of Personnel. Firm will provide project manager, Sara Allinder, AICP, and any additional qualified individual(s) to assist City’s Planning Department and will be assigned subject to the approval of the Planning Manager or City Manager.

6. Billings and Payments.

6.1 Firm shall submit a billing statement which will include services by Firm provided monthly in arrears, no later than the tenth of the month following the month service was rendered. The billing statement shall be submitted to the City’s designee.

6.2 Billings are to be made directly to the following address:

City of Madera
Attn: Arnaldo Rodriguez
205 W. 4th Street
Madera, CA 93637

6.3 The billing statements shall be prepared and organized in a manner that facilitates an efficient review of the services performed.

6.4 City shall make payments monthly based on a monthly itemized billing statement for the previous month. City shall make its best effort to process payments promptly and not later than 30 days after receiving Firm's monthly billing statement.

7. Term and Termination.

7.1 This Agreement shall be effective on April 2, 2020, after approval by the City Council at a duly scheduled meeting thereof and shall continue in full force and effect unless otherwise terminated earlier by one of the parties. Firm may be contacted following termination of the Agreement for clarification and consultation on matters covered during performance of the scope of services. Any such contact will be billed in accordance with Section 4 of this Agreement.

7.2 City reserves the right to discharge Firm and terminate this Agreement at any time. In the event of such discharge or termination, the City shall compensate Firm for services rendered up to and including the date of termination. City shall terminate services and/or the Agreement by delivering to Firm a written notice specifying the extent to which services and/or the Agreement are terminated and the effective date of the termination. Notice of termination shall be emailed as follows:

Provost and Pritchard Consulting Group
Heather Bashian, RCE 73075
Vice President
hbashian@ppeng.com

7.3 Firm may terminate this Agreement at any time by giving the City not less than fifteen (15) days prior written notice. Notices required under this section shall be emailed as follows:

City of Madera
Arnaldo Rodriguez, City Manager
arodriguez@madera.gov

8. Insurance and Indemnification.

8.1 During the term of this Agreement, Firm shall maintain, keep in force, and pay all premiums required to maintain and keep in force the policies and limits of such policies as required in Exhibit B of this Agreement.

8.2 To the furthest extent allowed by law, Firm shall indemnify, hold harmless, and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage), and from any and all claims, demands, and actions in law or equity (including reasonable attorney's fees and litigation expense) that arise out of, pertain to, or related to the negligence, recklessness, or willful misconduct of Firm, its principals, officers, employees, agents, or volunteers in the performance of this Agreement. The obligations under this paragraph are in addition to, and are not limited by any insurance which Firm is otherwise required to maintain under this Agreement.

9. Independent Contractor. In performance of the work, duties and obligations assumed by Firm under this Agreement, it is mutually understood and agreed that Firm, including any and all of Firm's officers, agents, and employees, will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as servant, employee, agent, partner, or associate of City. Because of its status as an independent contractor, Firm and its employees shall have absolutely no right to employment rights and benefits available to City employees. Firm shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Firm shall be solely responsible and hold City harmless from all matters related to payment of Firm's employees, including compliance with social security, withholding, and all other regulations governing such matters.

10. Hiring of Consultant's Associates and/or Subcontractors. City agrees that each of Consultant's associates and/or subcontractors will only be able to obtain a direct contract or professional services agreement with the City, only after the expiration of the contract or professional services agreement with Consultant AND only after 2 years from the expiration date of the contract or professional services agreement with Consultant. City agrees to hire one of Consultant's associates and/or subcontractors as a full time, permanent, fully benefited employee of the City, only after City has performed a recruitment AND the associate and/or subcontractor has billed 960 hours to the City. If City employs Consultant's associates and/or subcontractors through another temporary service or staffing agency, City agrees to pay a fee of 10% of the associate and/or subcontractor's annualized wages based on the hourly rate charged, to Consultant.

11. Compliance with Law. Firm shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, and directives, and all provisions required to be included are incorporated by reference.

12. Miscellaneous.

12.1 Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

12.2 Governing Law. The parties agree that this Agreement shall be governed and constructed by and in accordance with the Laws of the State of California.

12.3 Required License and Professional Credentials. Firm and personnel providing services shall maintain all licenses and professional credentials necessary for the provision of such services. Firm shall promptly notify City of changes of status or events that might impact the provision of professional services to City.

12.4 Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.

12.5 Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

12.6 Incorporation of Documents. All documents constituting the Agreement documents described in Section 3 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.

12.7 Integration. This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties. There are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.

12.8 Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.

12.9 Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

12.10 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.

12.11 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

12.12 Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Madera or in the United States District Court for the Eastern District of California.

12.13 Recovery of Costs. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

13. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Firm and the City.

RINCON CONSULTANTS, INC.

CITY OF MADERA

Name
Title
Provost and Pritchard Consulting Group

Andrew J. Medellin, Mayor

Date: _____, 2020

Date: _____, 2020

ATTEST

APPROVED AS TO FORM

Alicia Gonzales, City Clerk

Hilda Montoy, City Attorney

Date: _____, 2020

Date: _____, 2020

EXHIBIT A

SCOPE OF SERVICES

Firm will provide the following professional planning services at the direction of the Planning Manager or City Manager. Specific responsibilities of Firm's staff will be coordinated between City staff and Ms. Allinder as projects are assigned.

1. Assist City staff with processing of property development entitlements and other land use planning processes and documents. Processing services may include review of applications for completeness; applicant communication; coordination of staff and public agency review and comment; preparation of legal notices; and preparation of analysis and staff reports, including resolutions/ordinances.
2. Assist City staff in the coordination of the CEQA process and compliance, including preparation of categorical exemptions, initial studies, and negative declarations as well as coordination of the EIR process.
3. Assist City staff with the preparation and/or coordination of planning documents, including the Zoning Ordinance, General Plan, and special studies.
4. Attending and giving oral presentations at Planning Commission and/or City Council meetings, neighborhood councils, or other stakeholder organizations
5. Other such matters as may be directed from time to time by the City Manager and/or Planning Manager.

EXHIBIT B

INSURANCE REQUIREMENTS

Insurance Requirements.

Without limiting Firm's indemnification of City, and prior to commencement of Work, Firm shall obtain, provide, and continuously maintain at its own expense during the term of the Agreement, and shall require any and all Subcontractors and Sub-consultants of every Tier to obtain and maintain, policies of insurance of the type and amounts described below and in form satisfactory to the City.

Minimum Scope and Limits of Insurance:

Firm shall maintain limits no less than:

- **\$2,000,000 General Liability** (including operations, products, and completed operations) per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. Coverage should be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form CG 00 01. General liability policies shall be endorsed using ISO form CG 20 10 that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **\$1,000,000 Automobile Liability** combined single limit per accident for bodily injury or property damage at least as broad as ISO Form CA 00 01 for all activities of Firm arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles. Automobile Liability policies shall be endorsed to provide that the City and its officers, officials, employees and agents shall be additional insureds under such policies.
- **Workers' Compensation** as required by the State of California and **\$1,000,000 Employer's Liability** per accident for bodily injury or disease. Firm shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.
- **\$1,000,000 Professional Liability (Errors & Omissions)** per claim in the aggregate. Firm shall maintain professional liability insurance that insures against professional errors and omission that may be made in performing the Services to be rendered in connection with this Agreement. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement, and Firm agrees to maintain continuous coverage through a period of no less than three years after completion of services required by this Agreement.

Maintenance of Coverage.

Firm shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Firm, its agents, representatives, employees, subcontractors, or sub-consultants as specified in this Agreement.

Proof of Insurance.

Firm shall provide to the City certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

Acceptable Insurers.

All insurance policies shall be issued by an insurance company currently authorized by the insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and a Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide.

Waiver of Subrogation.

All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers, or shall specifically allow Firm, or others providing insurance evidence in compliance with these specifications, to waive their right to recovery prior to a loss. Firm hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its sub-consultants or subcontractors.

Enforcement of Contract Provisions (non estoppel).

Firm acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Firm of non-compliance with any requirement imposes no additional obligations on the City, nor does it waive any rights hereunder.

Specifications not Limiting.

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If Firm maintains

higher limits than the minimums required above, the entity shall be entitled to coverage at the higher limits maintained by Firm.

Notice of Cancellation.

Firm agrees to oblige its insurance agent or broker and insurers to provide to the City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

Self-insured Retentions.

Any self-insured retentions must be declared to and approved by City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

Timely Notice of Claims.

Firm shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Firm's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional Insurance.

Firm shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.