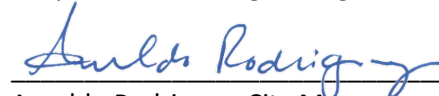


REPORT TO CITY COUNCIL

Approved by:



Gary Conte, Planning Manager



Arnaldo Rodriguez, City Manager

Council Meeting of: April 21, 2021

Agenda Number: D-5

SUBJECT:

Professional Planning and Environmental Review Services Agreement with Rincon Consultants, Inc.

RECOMMENDATION:

Adopt a Resolution approving the Professional Services Agreement between the City of Madera and Rincon Consultants, Inc. for City Planning and Environmental Services and Rescinding Resolution 20-45.

SUMMARY:

City Council approved Resolution 20-45 authorizing a Professional Services Agreement with Rincon Consultants, Inc. (Rincon) to provide planning and environmental services related to implementation of the City's adopted plans, policies and zoning regulations. However, due to discrepancies in the Agreement, the Agreement was never fully executed. Staff and Rincon have resolved the Agreement discrepancies and are prepared to move forward with executing a corrected Agreement. Purpose of this Resolution is to acknowledge the corrections to the discrepancies in original Agreement and to approve a new Agreement benefiting both parties. Funds are available in the Planning Department Fiscal Year 2020/21 Budget to finance the Agreement.

DISCUSSION:

The discrepancies in the original Agreement focused on compensation as well as personnel assignment and duties. Staff and Rincon have worked together to resolve these discrepancies as well as updated the scope of services to respond to present City Planning Department professional planning and environmental review service needs. 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. The City has and is likely to continue to receive an unprecedented number of land use entitlement applications impacting the Planning Department's ability to process applications in a timely matter based on its current staffing resources. The Planning Department is presently is processing 70 discretionary and ministerial entitlement applications in addition to reviewing building plot plan and construction plan reviews, and environmental reviews for other City Departments.

The City has consistently focused efforts and resources to provide a high level of services to its residents and business. These efforts have resulted in notable development of new housing, expanded commercial opportunities, and job creating industrial growth. The purpose for Resolution 20-45, as is with the present Resolution approving a corrected Professional Services Agreement between the City and Rincon is to assist the Planning Department in providing an appropriate and desirable level of services to the community, Planning Commission and to the Council. The Agreement will be for planning, zoning and environmental review and report preparation performed as directed by the City's Planning Department. The total budget of the Agreement is not to exceed \$50,000. We note that the City engaged in a process seeking proposals for planning services.

FINANCIAL IMPACT:

There will be no fiscal impact to the Planning Department Fiscal Year 2020/21 Budget. The Department's Fiscal Year 2020/21 Budget anticipated entering into an Agreement with Rincon for Professional Services and includes a budget of \$50,000 for the Agreement based on the approval of Resolution 20-45.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The recommended Professional Services Agreement with Rincon is integral to the review and approval process for development project. As such, approval of the Professional Services Agreement with Rincon is consistent with the City's vision statements for "a well-planned city" and "good jobs and economic opportunity.

ALTERNATIVES:

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

1. Authorize a lesser budget increase to the Professional Services Agreement with Rincon Consultants, Inc.
2. Direct staff to solicit additional proposals for professional planning services. Such action will represent a delay of approximately 3 to 4 months due to the advertisement period, review of proposals, and selecting a consultant.

ATTACHMENTS:

1. Resolution
2. Professional Services Agreement Between Rincon Consultants, Inc. and the City of Madera for Planning and Environmental Services

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AN AGREEMENT BETWEEN THE CITY OF MADERA AND RINCON CONSULTANTS, INC. FOR PROFESSIONAL PLANNING AND ENVIRONMENTAL REVIEW SERVICES AND RESCINDING RESOLUTION 20-45

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

WHEREAS, Rincon Consultants, Inc. has been identified as a firm having the professional competence, experience, and qualifications to provide professional planning and environmental services; and

WHEREAS, the City adopted Resolution No. 20-45 approving the City to enter into an agreement with Rincon Consultants, Inc. for the purpose of providing professional planning and environmental services; and

WHEREAS, the original agreement made a part of Resolution No. 20-45 included compensation, as well as personnel assignment and duty discrepancies; and

WHEREAS, the City and Rincon Consultants, Inc. have worked together to resolve the compensation, and personnel assignment and duty discrepancies, and have updated the scope of services to respond to present City Planning Department planning and environmental review service needs; and

WHEREAS, the City has prepared a Professional Services Agreement with Rincon Consultants, Inc. which is in the best interests of both parties; and

WHEREAS, the Professional Services Agreement with Rincon Consultants, Inc. includes a not-to-exceed compensation of \$50,000; and

WHEREAS, funds for the Professional Services Agreement is available in the Planning Department's 2020/21 Fiscal Budget for Contract Planning Services; and

WHEREAS, the City Council authorizes the Planning Manager to spend the Planning Department's 2020/21 Fiscal Budget for Contract Planning Services in the amount of \$50,000 for Professional Planning and Environmental Review Services performed by Rincon Consultants, Inc.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA DOES HERBY RESOLVE, FIND AND ORDER AS FOLLOWS:

1. The recitals listed above are true and correct.
2. The City approves the Professional Services Agreement with Rincon Consultants, Inc. for not-to-exceed compensation fee of \$50,000, a copy of which is attached hereto and incorporated by reference.

3. Resolution 20-45 is rescinded and null and void.
4. The Resolution is effective immediately upon adoption.

ADOPTED ON April 21, 2021, by the City Council of the City of Madera by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY OF MADERA:

By: _____
Santos Garcia, Mayor

Date: _____

ATTEST:

APPROVED AS TO LEGAL FORM:

By: _____
Alicia Gonzales, City Clerk

By: _____
Hilda Cantú Montoy, City Attorney

Date: _____

Date: _____

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made and entered into the 14th day of April 2021, by and between Rincon Consultants, Inc. (“Firm”) and the City of Madera (“City”).

RECITALS

- A. The City has an immediate need for professional planning and environmental review consultant services due to the unprecedented number of land use entitlement applications impacting the Planning Department’s ability to process applications in a timely matter based on its current staffing resources.
- 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 Senior Project Manager, Eric VonBerg, and any additional qualified individuals to assist City’s Planning Department and will be assigned subject to the approval of the Planning 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: Gary Conte, Planning Manager
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 21, 2021, 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
Gary Conte, Planning Manager
gconte@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.

(SIGNATURES ON NEXT PAGE)

CITY OF MADERA

A municipal corporation of
the State of California

By: _____
Santos Garcia, Mayor

Date: _____

ATTEST:

By: _____
Alicia Gonzales, City Clerk

Date: _____

RINCON CONSULTING, INC.

By: _____
Richard Daulton, MURP
Principal/Vice President

Date: _____

APPROVED AS TO FORM:

By: _____
Hilda Cantú Montoy, City Attorney

Date: _____

EXHIBIT A

SCOPE OF SERVICES

Firm will provide professional planning and environmental review services to include:

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 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 too 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.