



REQUEST FOR LEGAL SERVICES

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| DATE OF REQUEST: January 9, 2013 | DEPT/DIV FILE ID: CEDD/Planning PA11-0028 |
| REQUESTER: Claudia Manrique, Associate Planner | EXTENSION/EMAIL: 3225 |
| DEPARTMENT: Community & Economic Development | DIVISION: Planning |
| DEPT/DIV PROJECT TITLE/ID: CEDD/P | RESPONSIBLE SUPERVISOR: John Terell |
| CITY COUNCIL INITIATED? (check one) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | REQUEST AUTHORIZED BY: John Terell <i>[Signature]</i> |
| RELATED REQUEST PREVIOUSLY SUBMITTED TO THE CITY ATTORNEY'S OFFICE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES: Attorney: _____ City Attorney's File ID Number: _____ Please attach a copy of the original request and response from our office. | |
| TITLE OF ITEM OR DOCUMENT: Agreement for Professional Consultant Services Project No. PA11-0028 | |
| SERVICES REQUESTED (Include specific Legal Issues or questions to be addressed and provide all relevant background information and attach all necessary document.) The Agreement for Professional Consultant Services for Project No. PA11-0028 has been signed by RBF Consulting and is being forward to the City Attorney's Office for signature. Attached are two copies of the document. | |

Note: Requests will generally be completed within 10 business days. Therefore please submit your requests allowing for this response time.

CITY ATTORNEY'S OFFICE RESPONSE:

| | | |
|-----------------------------------|---|----------------------------|
| DATE SUBMITTED: 1/10/13 | LOGGED BY: EST | ASSIGNED TO: PJE |
| CA MATTER NO.: 203-0022 | CA MATTER NAME: RBF Consulting - Proj # PA11-0028 | |

CONFIDENTIAL: PROTECTED BY ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT PRIVILEGES

ATTORNEY RESPONSE/COMMENTS

This contract has no pricing term, only a not-to-exceed. If there are hourly rates those should be included. If this is a flat, fixed fee, exhibit "c" should so state. A not-to-exceed language is just a maximum.

Contract is flat/fixed fee

PJE 1/14/13

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 Return to Dept. Forward to _____ Other: _____

**AGREEMENT FOR PROFESSIONAL
CONSULTANT SERVICES
Project No. PA11-0028 (R30)**

This Agreement is by and between the City of Moreno Valley, California, a municipal corporation, hereinafter described as "City," and RBF Consulting, a company of Michael Baker Corporation, a California corporation, hereinafter described as "Consultant." This Agreement is made and entered into effective on the date the City signs this Agreement.

RECITALS

WHEREAS, the City has determined it is in the public interest to proceed with the work hereinafter described as "Project"; and

WHEREAS, the City has determined the Project involves the performance of professional and technical services of a temporary nature as more specifically described in Exhibit "A" (Consultant's Proposals) hereto; and

WHEREAS, the City does not have available employees to perform the services for the Project; and

WHEREAS, the City has requested the Consultant to perform such services for the Project; and

WHEREAS, the Consultant is professionally qualified in California to perform the professional and technical services required for the Project;

THEREFORE, the City and the Consultant, for the consideration hereinafter described, mutually agree as follows:

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DESCRIPTION OF PROJECT

1. The Project is described as planning and environmental services related to adjacent R30 (Residential – up to 30 units per acre) and CC (Community Commercial) land use changes in the vicinity of Perris Boulevard and Iris Avenue (PA11-0028) related to Housing Element compliance. The contract is related to another contract under the Southern California Association of Governments for R30 and Mixed Use land use changes and related work for the Alessandro Corridor Implementation Program.

SCOPE OF SERVICES

2. The Consultant's scope of service is described on Exhibit "A" attached hereto and incorporated herein by this reference.

3. The City's responsibility is described on Exhibit "B" attached hereto and incorporated herein by this reference.

PAYMENT TERMS

4. The City agrees to pay the Consultant and the Consultant agrees to receive a "Not-to-Exceed" fee of \$22,500 in accordance with the payment terms provided on Exhibit "C" attached hereto and incorporated herein by this reference.

TIME FOR PERFORMANCE

5. The Consultant shall commence services upon receipt of written direction to proceed from the City.

6. The Consultant shall perform the work as described within Exhibit "A" attached hereto and incorporated by this reference.

7. The Consultant and the City agree that the work as described within Exhibit "A" shall be completed within sixty (60) days of the execution date of this Agreement. Both the Consultant

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and the City acknowledge that it will not unreasonably withhold approval of the Consultant's requests for extensions of time in which to complete the work required of the Consultant hereunder.

8. The Consultant shall not be responsible for performance delays caused by others or delays beyond the Consultant's reasonable control, and such delays shall extend the time for performance of the work by the Consultant. Delays caused by non-performance or unjustified delay in performance by a subconsultant of the Consultant are not considered to be beyond the Consultant's reasonable control.

9. (a) The Consultant agrees that the personnel, including the principal Project manager, and all sub-consultants assigned to the Project by the Consultant, shall be subject to written prior approval of the City.

(b) No change in subconsultants or key personnel shall be made by the Consultant without written prior approval of the City, which shall not be unreasonably conditioned, denied or withheld.

SPECIAL PROVISIONS

10. It is understood and agreed that the Consultant is, and at all times shall be, an independent contractor and nothing contained herein shall be construed as making the Consultant or any individual whose compensation for services is paid by the Consultant, an agent or employee of the City, or authorizing the Consultant to create or assume any obligation or liability for or on behalf of the City.

11. The Consultant may also retain or subcontract for the services of other necessary consultants with the prior written approval of the City. Payment for such services shall be the responsibility of the Consultant. Any and all subconsultants employed by the Consultant shall be subject to the terms and conditions of this Agreement, except that the City shall have no obligation

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to pay any subconsultant for services rendered on the Project.

12. The Consultant and the City agree to use reasonable care and diligence to perform their respective services under this Agreement. Unless hereinafter specified, neither party shall be responsible for the services of the other or any subcontractor or sub-consultant employed by the other party.

13. The Consultant shall comply with applicable federal, state, and local laws in the performance of work under this Agreement.

14. (a) The Consultant agrees to indemnify, defend, and save the City, the Moreno Valley Housing Authority (HA), and the Moreno Valley Community Services District (CSD), their officers, agents and employees harmless from any and all liability, claims, demands, damages, or injuries to any person, including injury to the Consultant's employees and all claims which arise from or are connected with the negligent performance of or failure to perform the work or other obligations of the Consultant under this Agreement, or are caused or claim to be caused by the negligent acts of the Consultant, its officers, agents or employees, or its subconsultant(s) or any person acting for the Consultant or under its control or direction; provided, however, that this indemnification and hold harmless shall not include claims arising from the negligence or willful misconduct of the City, HA, and CSD, their officers, agents or employees.

(b) The City agrees to indemnify, defend and save the Consultant and their officers, agents and employees harmless from any and all liability, claims, damages or injuries to any person, including injury to the City's employees and all claims which arise from or are connected with the negligent performance or failure to perform the services or other obligations of the City under this Agreement, or are caused or claim to be caused by the negligent acts of the City, its officers, agents or employees, or its subcontractor(s) or any person acting for the City or under its control or direction; provided, however, that this indemnification and hold harmless shall not

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include any claims arising from the negligence or willful misconduct of the Consultant, its officers, agents, or employees.

15. (a) The Consultant shall procure and maintain, at its sole expense, throughout the term of this Agreement and any extension thereof, Professional Errors and Omission Insurance coverage in the form and substance and with carriers acceptable to the City. Such coverage limits shall not be less than \$1,000,000 per claim and aggregate.

(b) During the entire term of this Agreement, the Consultant agrees to procure and maintain General Liability Insurance in form and substance and with carriers acceptable to the City at its sole expense to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomever, resulting directly or indirectly from any negligence, errors or omissions of the Consultant its sub-consultant or any person acting for the Consultant or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any persons caused directly or indirectly by or from negligence, errors or omissions of the Consultant or its subconsultants, or any person acting for the Consultant or under its control or direction.

(c) Such General Liability Insurance shall be maintained in full force and effect throughout the terms of the Agreement and any extension thereof in the minimum limits provided below:

| | <u>General Liability</u> |
|-----------------|----------------------------|
| Bodily Injury | \$1,000,000 per occurrence |
| Property Damage | \$ 500,000 per occurrence |

A combined single limit policy with aggregate limits in the amount of \$2,000,000 will be considered equivalent to the above minimum limits.

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(d) If the operation under this Agreement results in an increased or decreased risk in the opinion of the City Manager, then the Consultant agrees that the minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager.

(e) The Consultant shall procure and maintain, at its sole expense, and throughout the term of this Agreement and any extension thereof, Public Liability and Property Damage Insurance coverage for owned and non-owned automotive equipment operated on City premises. Such coverage limits shall not be less than \$1,000,000 combined single limit.

(f) The Consultant shall procure and maintain, at its sole expense, Workers' Compensation Insurance in such amounts as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Consultant and the City, HA and CSD against any loss, claim, or damage arising from any injuries or occupational diseases happening to any worker employed by the Consultant in the course of carrying out the Agreement.

(g) The City of Moreno Valley, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District, their officers, employees and agents shall be named as additional insured on all policies of insurance except errors and omissions and worker's compensation.

(h) A Certificate of Insurance and appropriate additional insured endorsement evidencing the above insurance coverage shall be submitted to the City Clerk prior to the execution of this Agreement on behalf of the City.

(i) The Certificate of Insurance or an appropriate binder shall bear an endorsement containing the following provisions:

"Solely as respect to services done by or on behalf of the named insured for the City of Moreno Valley, it is agreed that the City of Moreno Valley, the

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Community Redevelopment Agency of the City of Moreno Valley, and the Moreno Valley Community Services District, their officers, employees and agents are included as additional insured under this general liability policy and the coverage(s) provided shall be primary insurance and not contributing with any other insurance available to the City of Moreno Valley, the Moreno Valley Housing Agency, and the Moreno Valley Community Services District, its officers, employees and agents, under any third party liability policy."

(j) Insurance companies providing insurance hereunder shall be rated (A minus: VII - Admitted) or better in Best's Insurance Rating Guide and shall be legally licensed and qualified to conduct insurance business in the State of California.

(k) The terms of the insurance policy or policies issued to provide the above insurance coverage shall not be amended to reduce the above required insurance limits and coverages nor shall such policies be canceled by the carrier without thirty (30) days prior written notice by certified or registered mail of amendment or cancellation to the City, except that cancellation for non-payment of premium shall require ten (10) days prior written notice by certified or registered mail. In the event the said insurance is canceled, the Consultant shall, prior to the cancellation date, submit to the City Clerk new evidence of insurance in the amounts established.

16. During the performance of this Agreement, the Consultant will not unlawfully discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, sex, or age. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex, or age.

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17. Consultant and subconsultants shall pay prevailing wage rates when required by the Labor Laws of the State of California.

18. (a) All material, including but not limited to written comments, drawings, documents, and specifications provided, produced, or compiled by the Consultant in performance of this agreement shall become the property of the City. The Consultant shall deliver to the City's designated project manager, Community and Economic Development Director or his designated representative, fully completed reviews of and written comments on screencheck, draft and final versions of the Environmental Impact Report (EIR) and all other related environmental documents or studies which shall become the property of the City. The Consultant may retain, for its files, copies of any and all material, including written comments, drawings, documents, and specifications, produced by the Consultant in performance of this Agreement. The Consultant agrees to deliver such property to the City upon completion or termination of the Agreement and after payment in full has been received by Consultant for services rendered.

(b) The Consultant shall be entitled to copies of all furnished materials for his files and his subconsultants, if any.

(c) The City agrees to hold the Consultant free and harmless from any claim arising from any unauthorized use of computations, maps, and other documents prepared or provided by the Consultant under this Agreement, if used by the City on other work without the permission of the Consultant. Consultant acknowledges that Consultant work product produced under this agreement may be public record under State law.

19. (a) The City may terminate this Agreement without fault on the part of Consultant by giving at least ten (10) days written notice to the Consultant. The written notice shall specify the date of termination. Upon receipt of such notice, the Consultant may continue services on the project through the date of termination, provided that no service(s) shall be commenced or

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continued after receipt of the notice, which is not intended to protect the interest of the City. The City shall pay the Consultant within thirty (30) days after the date of termination for all non-objected to services performed by the Consultant in accordance herewith through the date of termination. Such termination may be effective immediately.

(b) Either party may terminate this Agreement for cause. In the event the City terminates this Agreement for cause, the Consultant shall perform no further service(s) under the Agreement unless the notice of termination authorizes such further work.

20. This Agreement is binding upon the City and the Consultant and their successors and assigns. Except as otherwise provided herein, neither the City nor the Consultant shall assign, sublet, or transfer its interest in this Agreement or any part thereof without the prior written consent of the other, which shall not be unreasonably conditioned, denied or withheld.

21. A City representative shall be designated by the City and a Consultant representative shall be designated by the Consultant. The City representative and the Consultant representative shall be the primary contact person for each party regarding performance of this Agreement. The City representative shall cooperate with the Consultant, and the Consultant's representative shall cooperate with the City in all matters regarding this Agreement and in such a manner as will result in the performance of the services in a timely and expeditious fashion.

22. This Agreement represents the entire and integrated Agreement between the City and the Consultant, and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be modified or amended only by a subsequent written Agreement signed by both parties.

23. Where the payment terms provide for compensation on a time and materials basis, the Consultant shall maintain adequate records to permit inspection and audit of the Consultant's time and materials charges under this Agreement. The Consultant shall make such records

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available to the City at the Consultant's office during normal business hours upon reasonable notice. Nothing herein shall convert such records into public records. Except as may be otherwise required by law, such records will be available only to the City. Such records shall be maintained by the Consultant for three (3) years following completion of the services under this Agreement.

24. The City and the Consultant agree, that to the extent permitted by law, until final approval by the City, all data shall be treated as confidential and will not be released to third parties without the prior written consent of both parties.

25. The Consultant shall employ no City official or employee in the work performed pursuant to this Agreement. No officer or employee of the City shall have any financial interest in this Agreement in violation of federal, state, or local law.

26. All written comments, Plans, drawings, Specifications, reports, logs, and other documents prepared by the Consultant in its performance under this Agreement shall, upon completion of the project, be delivered to and be the property of the City, provided that the Consultant shall be entitled, at its own expense, to make copies thereof for its own use.

27. The laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement, and shall also govern the interpretation of this Agreement. Venue shall be vested in the Superior Court of the State of California, County of Riverside.

28. The standard of care applicable to Consultant's services is the degree of skill and diligence normally employed by engineers or providers of technical services performing the same or similar services.

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29. Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures of construction contractors, or the safety precautions and programs incident thereto, and shall not be responsible for such construction contractors' failure to perform work in accordance with the contract documents.

SIGNATURE PAGE FOLLOWS

IN WITNESS HEREOF, the parties have each caused their authorized representative to execute this Agreement.

City of Moreno Valley

RBF Consulting

BY: Barry Foster

Barry Foster
CEDD Director

1/24/13
Date

BY: Collette S. Maxwell

TITLE: Vice President
(President or Vice President)

January 7, 2013
Date

BY: [Signature]

TITLE: Asst. Secy.
(Corporate Secretary)

1/7/13
Date

APPROVED AS TO LEGAL FORM:

[Signature]
City Attorney

DATE: 1-24-13

Attachments

EXHIBIT A



September 10, 2012

Mr. John Terrell
CITY OF MORENO VALLEY
14177 Frederick Street
Moreno Valley, CA 92552

Subject: Proposal/Contract to Provide Environmental Clearance for Calculation 4 Area and Rezone of R-5 Property to Community Commercial

Dear Mr. Terrell:

In accordance with your request, RBF Consulting, a Company of Michael Baker Corporation (RBF) is pleased to submit this proposal/contract to provide environmental clearance for Calculation 4 Area as identified within the 2008-2014 Housing Element and a rezone of 22.2 acres from R-5 to Community Commercial.

On February 22, 2011, the Moreno Valley City Council approved the 2008-2014 Housing Element to the General Plan, in compliance with State law. The Housing Element was certified by the California Department of Housing and Community Development (HCD), and was found to be in full compliance with State housing element law on October 13, 2010. The Housing Element action was determined to be exempt from CEQA; however, future rezoning of parcels as identified in the Housing Element is subject to CEQA.

RBF is under contract to the Southern California Association of Governments (SCAG) through the Compass Blueprint Program to create the Mixed Use Overlay Districts and associated environmental clearance. The Mixed Use Overlay Districts will further implement the Vision Plan developed previously through SCAG funding for the Alessandro Boulevard Corridor.

Since the SCAG funding only provides environmental clearance for the activity nodes along Alessandro, an additional fee is required to enlarge the Mitigated Negative Declaration (MND) to include Calculation 4 Area, a node identified near the Perris Boulevard/Iris Avenue intersection. The MND has been prepared including Calculation 4 based on correspondence with the City, and will be refined to include one additional parcel at the southwest corner of the Perris Boulevard/Gentian Avenue intersection. The approximately 22.2-commercial property is currently zoned R-5 and will be modified to Community Commercial.

The MND is under preparation, and the technical studies have been prepared to include Calculation 4 Area at the request of the City. Additional work on the MND and the technical studies is necessary to include the property to be rezoned to commercial. This work effort leverages the funding provided by SCAG to achieve environmental clearance of the Overlay as well as satisfying the State housing requirements. The efficiency in providing one environmental document minimizes costs burdened on the City of Moreno Valley, along with more comprehensive technical analyses (traffic, air quality, noise, and greenhouse gas emissions review).

PLANNING ■ DESIGN ■ CONSTRUCTION

14725 Aliso Parkway, Irvine, CA 92618-2027 ■ P.O. Box 57057, Irvine, CA 92619-7057 ■ 949.472.3505 ■ Fax 949.472.8373

Offices located throughout California, Arizona & Nevada ■ www.RBF.com

EXHIBIT A

EXHIBIT B

**CITY - SERVICES TO BE PROVIDED
TO CONSULTANT**

1. Furnish the Consultant all in-house data which is pertinent to services to be performed by the Consultant and which is within the custody or control of the City, including, but not limited to, access to copies as needed, data from development applications for the project, copies of pertinent information such as General Plan and Title 9 of the Municipal code, right-of-way maps and other right-of-way data, pending or proposed subject property land division and development application data, all newly developed and pertinent design and project specification data, and such other pertinent data which may become available to the City.
2. Provide timely review, processing, and reasonably expeditious approval of all submittals by the Consultant.
3. Provide timely City project manager review with the Consultant when requested and when reasonably needed.

EXHIBIT C

TERMS OF PAYMENT

1. The Consultant's compensation shall not exceed \$22,500.
2. The Consultant will submit an invoice to the City once a month for progress payments along with documentation evidencing services completed to date. The progress payment is based on a percent complete fee basis. At no time will the City pay for more services than have been satisfactorily completed and the Planning Official's or Community & Economic Development Director's determination of the amount due for any progress payment shall be final.
3. The City shall pay the Consultant for all invoiced, authorized professional services within thirty (30) days of receipt of the invoice for same.
4. Any fees for authorized professional services furnished by the Consultant which have not been paid or contested by the City within thirty (30) days of the City's receipt of the invoice for such services will be subject to a late charge of one percent (1%) of the unpaid amount for each month for which payment has not been received by the Consultant.