

STAFF REPORT



ITEM NO. 10

CITY OF OCEANSIDE

DATE: June 6, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Neighborhood Services Department

SUBJECT: **APPROVAL OF AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH DAVID PAUL ROSEN AND ASSOCIATES**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 in an amount not to exceed \$35,000 to the Professional Services Agreement (PSA) with David Paul Rosen and Associates (DRA) and authorize the City Manager to execute the amendment.

BACKGROUND

The City Council approved the PSA with DRA on June 26, 2006, in the amount of \$125,000 to provide professional financial underwriting analysis and recommendations on affordable housing proposals. During this time period, DRA assisted with negotiating the DDA and related documents for the development of the Libby Lake Village with Habitat for Humanity, reviewed the proposals and provided an economic analysis and recommendations on selection of the developer for Cape Cod Villas, and assisted with the negotiation and drafting of the DDA and loan documents for Country Club Apartments. In addition, DRA drafted the Request for Qualifications to develop the Josepho property.

ANALYSIS

Based on the pipeline project requirements for Country Club Apartments, Cape Cod Villas, the Lil Jackson Senior project, and the Josepho site and the continued work on the capital plan and other analyses, it is estimated that an additional \$35,000 will be needed.

FISCAL IMPACT

Funds were appropriated for consulting services in the amount of \$125,000 in the approved 2006-08 Housing Department budgets; however, there is currently \$23,331.84 unexpended. It is anticipated that an additional \$35,000 will be needed before the beginning of the next contract period. Funds are available from the Inclusionary Housing In-lieu fund balance.

COMMISSION OR COMMITTEE REPORT

The Housing Commission at its meeting on February 27, 2007, recommended unanimously that the City Council approve the amendment to the PSA with DRA in an amount not to exceed \$35,000 and authorize the City Manager to execute the amendment.

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve Amendment 1 in an amount not to exceed \$35,000 to the Professional Services Agreement with David Paul Rosen and Associates and authorize the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:



Margery M. Pierce
Director of Neighborhood Services



Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



ATTACHMENT: Amendment to Professional Services Agreement
Professional Services Agreement
Housing Commission Report

RECEIVED

APR 27 2007

NEIGHBORHOOD SERVICES
HOUSING DIVISION

AMENDMENT NO. 1
TO
PROFESSIONAL SERVICES AGREEMENT
(DAVID PAUL ROSEN & ASSOCIATES)

THIS AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT (this "Amendment") is entered into this 27 day of April, 2007, by and between the City of Oceanside, a municipal corporation (the "City"), and David Paul Rosen and Associates (the "Consultant")

RECITALS

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement, dated June 26, 2006 (the "Agreement"), pertaining to Consultant providing certain financial and development analysis services for affordable housing development in Oceanside to City staff as set forth in the Agreement;

WHEREAS, Because of the unforeseen increase in the activities conducted pursuant to the Agreement, Consultant has requested an increase in the compensation for providing the services as set forth in the Agreement and City agrees to grant an increase in compensation for said services under the terms set forth in this Amendment; and

WHEREAS, City and Consultant mutually desire to amend and modify certain terms and conditions of the Agreement as more particularly set forth in this Amendment.

AGREEMENT

NOW THEREFORE in consideration of the mutual covenants contained herein and other valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties do mutually agree that the Agreement be amended and modified as follows:

1. Section 7 (Compensation) of the Agreement shall be and hereby is amended and modified to read in its entirety as follows:

"7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of One Hundred Sixty Thousand Dollars (\$160,000.00), in accordance with the Professional Fee and Expense Reimbursement Schedule attached and marked Attachment A. Reimbursement of expenses requires the prior approval of the Director of Neighborhood Service Department."

2. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Agreement.

3. The provisions of this Amendment shall control over any inconsistent provisions of the Agreement.

4. All provisions in the Agreement that are not addressed and amended in this Amendment shall remain in full force and effect, and are hereby ratified and reaffirmed.

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to Professional Services Agreement as of the day and year first written hereinabove.

CONSULTANT
David Paul Rosen and Associates

CITY
City of Oceanside, a municipal corporation

By: 
David Paul Rosen

By: _____
Peter A. Weiss
Interim City Manager

Dated: 4-26-07

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: 
City Attorney

NOTARY ACKNOWLEDGMENT OF CONSULTANT MUST BE ATTACHED.

RECEIVED
APR 27 2007
NEIGHBORHOOD SERVICES
HOUSING DIVISION

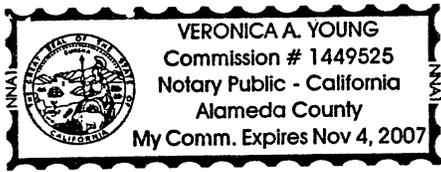
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of ALAMEDA } ss.

On APRIL 26, 2007 before me, VERONICA A. YOUNG,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared DAVID PAUL ROSEN,
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
Veronica A. Young 04/26/07
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

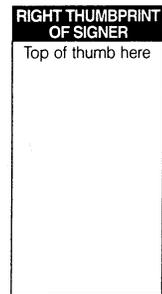
Description of Attached Document CITY OF OCEANSIDE
Title or Type of Document: AMENDMENT No. 1 TO PROFESSIONAL SERVICES AGREEMENT
Document Date: SIGNED: APRIL 26, 2007 Number of Pages: 2
Signer(s) Other Than Named Above: DAVID PAUL ROSEN + ASSOCIATES

Capacity(ies) Claimed by Signer

Signer's Name: DAVID PAUL ROSEN

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: SOLE PROPRIETORSHIP

Signer Is Representing: DAVID PAUL ROSEN + ASSOCIATES





DAVID PAUL ROSEN & ASSOCIATES
DEVELOPMENT, FINANCE AND POLICY ADVISORS

1330 Broadway, Suite 937
Oakland, California 94612-2509
tel: 510.451.2552
fax: 510.451.2554
admin@draconsultants.com
www.draconsultants.com

Calendar Year 2006

ATTACHMENT A

David Paul Rosen & Associates

Professional Fee and Expense Reimbursement Schedule

The following fee schedule represents fees and reimbursable expenses for 2006.

	<i>2006</i>
	<u>Hourly Rate</u>
Principal I	\$ 235.00
Principal II	\$ 225.00
Senior Economist	\$ 210.00
Associate	\$ 190.00
Research Associate I	\$ 175.00
Research Associate II	\$ 150.00
Data Entry, Word Processing, Administrative Assistance and Accounting	\$ 70.00

The following costs are reimbursable expenses with supporting receipts:

- mileage at \$0.60 per mile
- round-trip coach airfare as mutually agreed to by client and consultant
- economy rental car as needed
- hotel and meals as needed
- long distance telephone, Federal Express and FAX services
- copying and production charges
- supplies as required for deliverables

A 1.75% per month surcharge will be added to any invoice which is unpaid thirty days after the original date of the invoice. DRA may increase its Professional Fees once each calendar year, and will notify its clients of any change.

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: Affordable Housing Strategy Implementation

THIS AGREEMENT is made and entered into this 26 day of July, 2006, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and **David Paul Rosen and Associates**, hereinafter designated as CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** CONSULTANT will provide services to assist staff in implementing the Comprehensive Affordable Housing Strategy for the City of Oceanside.

CONSULTANT will provide financial and development analysis services to CITY staff as needed in evaluating development proposals, site acquisition opportunities, financing, financial structuring, leveraging and developer selection for affordable housing development in Oceanside. Services may include but need not be limited to the preparation of developer RFP's, RFQ's, notices of funding availability (NOFA's), DDA's, due diligence review of potential affordable housing development sites, due diligence review of developer submissions, due diligence evaluation of developer qualifications, architect qualifications, general contractor and property management firm qualifications, assuring maximum feasible leverage, bidding and evaluating debt and equity components for project financing, structuring competitiveness for tax credits, tax-exempt bonds, other state, federal and private sector funding programs, consistent with the CITY'S affordable housing policies and strategy.

2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the CITY'S Housing and Neighborhood Services Director. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKER'S COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured

against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

4. LIABILITY INSURANCE.

4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

<u>Comprehensive General Liability Insurance</u>	
(bodily injury and property damage)	
Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*
<u>Commercial General Liability Insurance</u>	
(bodily injury and property damage)	
General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000
<u>Automobile Liability Insurance</u>	\$ 1,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Neighborhood Services Director promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the CITY as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and

employees shall be excess only and not contributing with insurance provided pursuant to this Section.

- 4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors, omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful

misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of One hundred twenty five thousand dollars (\$125,000), in accordance with the Professional Fee and Expense Reimbursement Schedule attached and marked Attachment A. Reimbursement of expenses require prior approval of the Director of Housing & Neighborhood Services Department.
8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. This Agreement shall terminate on June 30, 2007, unless terminated earlier pursuant to Section 10, below.
9. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT'S duties be delegated, without the express written consent of the CITY. Any attempt to assign or delegate this Agreement without the express written consent of the CITY shall be void and of no force or effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

10. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

11. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated under-

standing between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

12. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

13. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

14. **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 CONSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures this 26 day of June, 2006.

DAVID PAUL ROSEN
AND ASSOCIATES

By: 

CITY OF OCEANSIDE

By: 
Barry Martin, Interim City Manager

APPROVED AS TO FORM:


City Attorney

95-1688570
Employer ID No.



DAVID PAUL ROSEN & ASSOCIATES
 DEVELOPMENT, FINANCE AND POLICY ADVISORS

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 Oakland, California 94612-2509
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Calendar Year 2006

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David Paul Rosen & Associates

**Professional Fee and Expense
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A 1.75% per month surcharge will be added to any invoice which is unpaid thirty days after the original date of the invoice. DRA may increase its Professional Fees once each calendar year, and will notify its clients of any change.

TO: OCEANSIDE CITY COUNCIL
FROM: HOUSING COMMISSION
RE: CONSULTANT SERVICES
DATE: FEBRUARY 27, 2007

THE HOUSING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH DAVID PAUL ROSEN & ASSOCIATES FOR PROVIDING CONSULTANT SERVICES AND FINANCIAL UNDERWRITING FOR THE CITY'S AFFORDABLE HOUSING PROJECTS.

CAMP	YES
COOPER	ABSENT
FARMER	YES
HUSKEY	YES
MEYER	YES
OLINSKI	YES
PARKER	YES
SORENSEN	YES

ALTERNATES

SAIZ	YES
DAVIS	YES