

STAFF REPORT*CITY OF OCEANSIDE*

DATE: September 12, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Housing and Neighborhood Services Department

SUBJECT: **APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH DAVID PAUL ROSEN AND ASSOCIATES**

SYNOPSIS

Staff recommends that the City Council approve the Professional Services Agreement (PSA) with David Paul Rosen and Associates (DRA) in an amount not to exceed \$125,000 to provide technical assistance, financial analysis, and loan underwriting services for affordable housing projects and authorize the City Manager to execute the agreement.

BACKGROUND

DRA was selected in 2003 to provide professional assistance to the Affordable Housing Development Task Force which resulted in the development of a comprehensive affordable housing strategy to meet the City's identified housing needs and the fair share goals stated in the Housing Element of the General Plan. Subsequently, DRA has been contracted annually to provide technical assistance, financial analysis, and loan underwriting services on several affordable housing proposals. Each year, the contract was for up to \$125,000. Due to the high volume and complexity of the projects currently in the pipeline, the 2006-07 contract was amended for an additional \$35,000.

The Neighborhood Services Department has several projects currently in process including La Mision Village, Libby Lake Village, Lil Jackson Senior Complex, Cape Cod Villas, Country Club Apartment acquisition, and the Josepho property development. DRA will continue to provide support as necessary; however, particular assistance will be required for the Country Club Apartment acquisition and for development of the Josepho site.

ANALYSIS

DRA will continue to provide assistance to City staff in implementing the Comprehensive Affordable Housing Strategy approved by the City Council. DRA will provide financial and development analysis services as needed to evaluate development proposals, site acquisition opportunities, financing, and financial structuring, leveraging and developer selection for affordable housing development. DRA provides a level of expertise that staff currently does not have. Services may include: The preparation of developer RFPs, RFQs, notices of funding availability, and

DDAs; due diligence review of potential affordable housing development sites and review of developer submissions; due diligence evaluation of developer qualifications, architect qualifications, general contractor and property management firm qualifications to assure maximum feasible leverage, bidding and evaluating debt and equity components for project financing, structuring competitiveness for tax credits, tax-exempt bonds, and other state, federal and private sector funding programs consistent with the City's affordable housing policies and strategy. DRA drafted the RFQ for the development of the Josepho 14 acre site on Mission Avenue and will provide professional assistance and recommendations to staff and the Housing Commission on the selection of the developer, financial underwriting, proforma analysis, negotiations of terms and drafting of the DDA and other related documents.

FISCAL IMPACT

Funds were appropriated for consulting services in the amount of \$125,000 in the FY2007-08 Housing Division budget.

COMMISSION OR COMMITTEE REPORT

The Housing Commission at its meeting on July 24, 2007, recommended unanimously that the City Council approve the Professional Services Agreement with DRA in an amount not to exceed \$125,000.

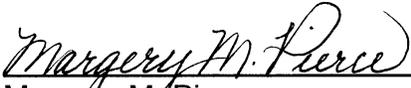
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve the Professional Services Agreement with David Paul Rosen and Associates in an amount not to exceed \$125,000 to provide technical assistance, financial analysis, and loan underwriting services for affordable housing projects, and authorize the City Manager to execute the agreement.

PREPARED BY:



Margery M. Pierce
Director, Neighborhood Services

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



ATTACHMENT: Professional Services Agreement
Housing Commission Report

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: Affordable Housing Strategy Implementation

THIS AGREEMENT is made and entered into this ___ day of _____, 2007, 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.

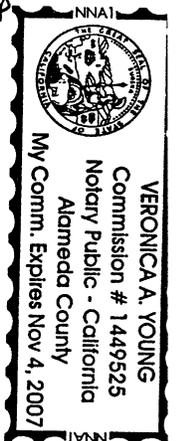
7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of One hundred twenty five thousand dollars (\$125,000), in accordance with the Professional Fee and Expense Reimbursement Schedule attached and marked Attachment 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. 2008
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 28 day of June, 2007.

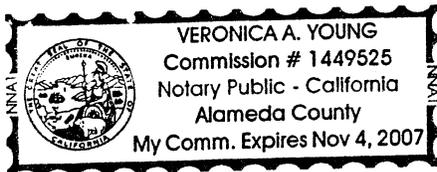
DAVID PAUL ROSEN
AND ASSOCIATES

CITY OF OCEANSIDE

By: David Paul Rosen

By: _____
Peter A. Weiss, Interim City Manager

APPROVED AS TO FORM:



Pauline Smith, ASST.
City Attorney

95-1688570
Employer ID No.



DAVID PAUL ROSEN & ASSOCIATES
DEVELOPMENT, FINANCE AND POLICY ADVISORS

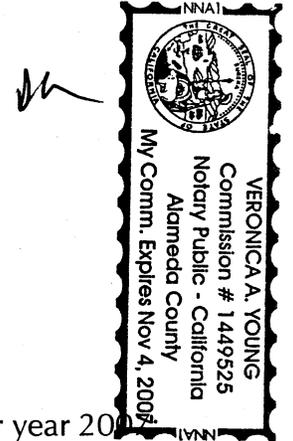
1330 Broadway, Suite 937
Oakland, California 94612-2509
tel: 510.451.2552
fax: 510.451.2554
admin@draconsultants.com
www.draconsultants.com

Calendar Year 2007

ATTACHMENT A

David Paul Rosen & Associates

**Professional Fee and Expense
Reimbursement Schedule**



The following fee schedule represents fees and reimbursable expenses for calendar year 2007

Principal I	\$250.00 per hour
Principal II	\$235.00 per hour
Senior Economist	\$220.00 per hour
Associate	\$190.00 per hour
Research Associate I	\$175.00 per hour
Research Associate II	\$150.00 per hour
Data Entry, Word Processing, Administrative Assistance and Accounting	\$75.00 per hour

The following costs are reimbursable expenses with supporting receipts:

- mileage at \$0.60 per mile; tolls
- round-trip coach airfare, as mutually agreed by client and consultant
- ground expenses: rental cars, parking, cabs and other
- meals and lodging
- long-distance telephone charges, facsimile charges and expedited courier service
- copying and production charges
- data service charges
- supplies, as required for deliverables.

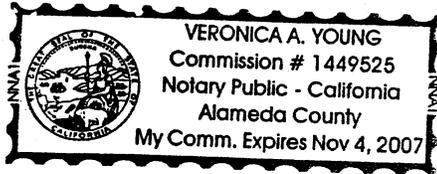
A 1.75% per month surcharge will be added to any invoice that is unpaid 30 days after the original date of the invoice. DRA will increase its Professional Fees on January 1, and will notify its clients in writing of this change.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of ALAMEDA } ss.

On JUNE 28 2007 before me, VERONICA A. YOUNG, Attorney Public
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
Signature of Notary Public
6/28/2007

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

Title or Type of Document: PROFESSIONAL SERVICES AGREEMENT
Document Date: JUNE 28, 2007 Number of Pages: 6
Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer

Signer's Name: DAVID PAUL ROSEN

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

Signer Is Representing: DAVID PAUL ROSEN AND ASSOCIATES

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

TO: OCEANSIDE CITY COUNCIL
FROM: HOUSING COMMISSION
RE: DAVID ROSEN & ASSOCIATES PROFESSIONAL SERVICES
AGREEMENT
DATE: JULY 24, 2007

THE HOUSING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE THE PROFESSIONAL SERVICES AGREEMENT WITH DAVID ROSEN & ASSOCIATES WITH THE SUGGESTED REVISIONS TO THE "ANALYSIS" IN THE STAFF REPORT. THE PROFESSIONAL SERVICES AGREEMENT IS NOT TO EXCEED \$125,000.00.

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

ALTERNATES

SAIZ	YES
DAVIS	YES