

REPORT TO CITY COUNCIL

DATE: FEBRUARY 24, 2016

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER *hrt for G.M.*

BY: NATHAN HAMBURGER, ASSISTANT CITY MANAGER *hrt*
DOUG HOOPER, PLANNING DIRECTOR *DH*

SUBJECT: CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY AND CARLOS KHANTZIS FOR THE PAYMENT OF COSTS ASSOCIATED WITH THE COMPLETION OF ENVIRONMENTAL DOCUMENTATION RELATED TO THE PARK AT LADYFACE SENIOR APARTMENTS PROJECT

The purpose of this item is to seek City Council approval for the City to enter into an Agreement with Carlos Khantzis, to receive payment from him for the costs associated with the completion of an Initial Study/Mitigated Negative Declaration, pursuant to the California Environmental Quality Act (CEQA), by Rincon Consultants, Inc.

In 2014, the City Manager authorized an Agreement with Rincon Consultants, Inc., not to exceed \$12,175.00, to prepare an environmental Initial Study for this project. As the Initial Study has been prepared, the Agreement being considered by the City Council totals \$16,734.00, which includes \$13,945.00 for the completion of the Initial Study/Mitigated Negative Declaration, plus an additional \$2,789.00 to pay for the City staff costs of reviewing the Initial Study/Mitigated Negative Declaration and preparing legal notices, and mailings, and other coordination-related tasks with the consultant. A separate and related Agreement for Consultant Services between the City and Rincon Consultants, Inc., for \$13,945.00 to complete the Initial Study/Mitigated Negative Declaration is also being considered by the City Council at the February 24, 2016 meeting.

The project applicant, Carlos Khantzis, is proposing to develop a 46-unit senior apartment complex. The proposed apartments would be included within two buildings on a 7.1 acre parcel located within in the Ladyface Mountain Specific Plan area, at 30800 Agoura Road. City staff determined that an Initial Study/Mitigated Negative Declaration is necessary for this project and finds the proposed scope of work acceptable. Rincon Consultants, Inc., has provided CEQA documentation preparation services for the City in the past, and staff has been pleased with the firm's quality of work and timely deliveries.

The proposed Agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff respectfully requests the City Council approve the Agreement with Carlos Khantzis for his payment of costs associated with the completion of environmental documentation related to "The Park at Ladyface" senior apartments project, in the amount of \$16,734.00

Attachment: Agreement for Payment of Costs for the Preparation of Environmental Documentation (with Attachment A)

**AGREEMENT FOR PAYMENT OF COSTS
IN CONNECTION WITH THE PREPARATION OF
ENVIRONMENTAL DOCUMENTATION**

THIS AGREEMENT is made this _____ day of _____, 2016, by and between the City of Agoura Hills (hereinafter "City") and Carlos Khantzis (hereinafter "Applicant").

1. Applicant request that California Environmental Quality Act documentation/Initial Study-Mitigated Negative Declaration ("environmental documentation") be prepared for, and under the direction of, City but at Applicant's expense, for consideration in connection with processing of the proposed Conditional Use Permit and Specific Plan Amendment for the construction of a senior apartment complex (the "Project") at 30800 Agoura Road, Assessor's Parcel Numbers 2061-001-025, Case Nos. 08-CUP-001 and 08-SPA-001.

2. Costs for preparation of the environmental documentation will be as follows:

a. Costs incurred pursuant to an agreement between Rincon Consultants, Inc. (hereinafter "Consultant") and City for preparation of the environmental documentation, the scope of work of which is attached hereto as Exhibit A. Consultant's estimate of the maximum cost of Consultant's services in the preparation of the environmental documentation is thirteen thousand nine hundred forty five dollars and zero cents (\$13,945.00) ("Consultant's Cost").

b. Staff time for research, writing, reviewing and processing, calculated by the number of hours spent times the current hourly rate of the employee or contractor, plus general overhead costs. This amount is estimated to be 20 percent of Consultant's Cost, i.e. two thousand seven hundred eighty nine dollars and zero cents (\$2,789.00) ("Administrative Cost").

c. Actual costs of materials, printing, mailing and publishing as applicable.

d. Additional consultant and administrative costs not included within the estimates in subsections (a) and (b) of this Section, to the extent such additional costs arise out of (1) new information supplied to the City regarding the project or its environmental impacts following circulation of the draft environmental document; (2) incomplete or inaccurate information supplied to the City by Applicant or Applicant's agents; or (3) revisions to the environmental document made necessary, in the City's judgment, by changes to the Applicant's project.

3. Applicant hereby agrees to pay City in full for all costs and expenses incurred by City for preparation of the environmental documentation. Concurrently with execution of this Agreement, Applicant shall pay City the full amount of sixteen thousand seven hundred thirty four dollars and zero cents (\$16,734.00) (Consultant's Cost plus Administrative Cost) to defray the costs of preparation of the

environmental documentation and agree to pay such additional sums as may be billed by City for preparation of the environmental documentation within fifteen (15) days from the date of any invoice, or prior to consideration of the Project by the City Planning Commission or City Council, whichever first occurs.

4. Any excess of the amount deposited over the actual cost incurred in connection with preparation of the environmental documentation shall be refunded by City to Applicant within fifteen (15) days from the date the Notice of Determination for the Project is filed with the County Clerk.

5. In the event Applicant abandons the Project and upon written request from Applicant directed to City's Director of Planning and Community Development, City will terminate or suspend performance of work by Consultant under the contract between City and Consultant. Applicant shall pay City for all costs incurred by City pursuant to its contract with Consultant and for all administrative and actual costs incurred by City.

6. Applicant shall not communicate with or discuss any matters relating to the preparation of environmental documentation with Consultant without prior approval from City's Director of Planning and Community Development or his duly authorized representative. Applicants shall address all questions regarding scheduling, content or distribution of the environmental documentation, or any related matters, to City staff, and not to Consultant. The purpose of this provision is to ensure that the environmental documentation is objective and is prepared on behalf of City, and not a document prepared for purposes of advocating approval of the Project.

7. Applicant hereby acknowledges and agrees as follows:

(a) City has sole discretion to select which of its employees are assigned to work on Applicant's applications;

(b) City has sole discretion to determine which persons City will hire as employees and contractors to work on the Applicant's applications.

(c) City has sole discretion to direct the work and evaluate the performance of the employees and contractors whom the City hires to work on Applicant's applications and City retains the right to terminate or replace at any time any employee or contractor who is assigned to work on Applicant's applications.

8. City and Applicant hereby acknowledge and agree that processing of Applicant applications is not contingent on the hiring of any specific contractor or consultant.

9. City and Applicant hereby acknowledge and agree that the Applicant's duty to reimburse the City is not contingent upon the City's approval or disapproval of the Project or upon the result of any action of the City.

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties thereto with respect to the subject matter of this Agreement. City and Applicant acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement.

11. **Amendment.** This Agreement may only be amended by a written document signed by the parties thereto.

12. **Interpretation.** This Agreement is deemed to have been prepared by all parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such ambiguity or uncertainty exists, shall be interpreted according to the applicable rules of contracts under the laws of the State of California.

13. **Litigation; Recovery of Fees and Costs.** In the event that City is required to initiate litigation to enforce this agreement or collect any sum due hereunder, the City shall be entitled to recover its reasonable attorneys fees and costs of suit should the City prevail.

14. **Assignment.** This Agreement shall be binding on and inure to the benefit of the parties and their heirs, successors, and assigns of the parties. Notwithstanding the foregoing, any reimbursement rights hereunder shall remain with Applicants unless Applicants specifically assign those rights to a successor by a written assignment delivered to City. Applicants may assign its rights and transfer its obligations under this Agreement only with City's prior written consent, which shall not be unreasonably withheld or delayed. Immediately upon the granting of such consent and City's receipt of a duly executed assignment and assumption agreement by Applicants and Assignee in accordance with the requirements of this Agreement, Applicants shall be released from all liability and obligations hereunder.

15. **Authority to Execute Agreement.** The person or persons executing this Agreement on behalf of Applicants warrants and represents that he or she has the authority to execute this Agreement on behalf of Applicants and has the authority to bind Applicants to the performance of its obligations hereunder.

CITY OF AGOURA HILLS:

By:

Harry Schwarz
Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

APPROVED AS TO FORM:

Candice K. Lee
City Attorney

APPLICANT:



Carlos Khantzis