



## REPORT TO CITY COUNCIL

**DATE:** MARCH 23, 2016

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** GREG RAMIREZ, CITY MANAGER 

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

**SUBJECT:** CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY AND DORON GELFAND AND OSSIE BEN TOV FOR THE PAYMENT OF COSTS ASSOCIATED WITH THE COMPLETION OF ENVIRONMENTAL DOCUMENTATION RELATED TO THE CORNERSTONE MIXED-USE PROJECT

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The purpose of this item is to seek City Council approval for the City to enter into an Agreement with Doron Gelfand and Ossie Ben Tov, to receive payment from them 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 \$17,439.00, 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 \$16,761.00, which includes \$13,968.00 for the completion of the Initial Study/Mitigated Negative Declaration, plus an additional \$2,793.00 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 \$13,968.00 to complete the Initial Study/Mitigated Negative Declaration is also being considered by the City Council at the March 23, 2016 meeting.

The project applicants are proposing to construct a mixed-use development in the Agoura Village Specific Plan area, on 8.21 acres of land located on the southeast corner of Agoura Road and Cornell Road. The proposed project includes 35 apartment units and 68,918 square feet of retail, restaurant and office space. City staff determined that an Initial Study/Mitigated Negative Declaration is necessary for this project and finds Rincon Consultants, Inc.'s 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 Doron Gelfand and Ossie Ben Tov for their payment of costs associated with the completion of environmental documentation related to the “Cornerstone” mixed-use project, in the amount of \$16,761.00

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 Doron Gelfand and Ossie Ben Tov (hereinafter "Applicants").

1. Applicants request that California Environmental Quality Act documentation/Initial Study ("environmental documentation") be prepared for and under the direction of City but at Applicants' expense, for consideration in connection with processing of the proposed Cornerstone mixed use project (the "Project") at the southeast corner of Agoura Road and Cornell Road, A.P.N. 2061-029-008-016) and 2061-030-(001-013), Case No. 07-AVDP-002.

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

a. Costs incurred pursuant to a contract between Rincon Consultants, Inc. (hereinafter "Consultant") and City for preparation of the environmental documentation, a copy 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 sixty-eight dollars and zero cents (\$13,968.00) ("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% of Consultant's Cost, i.e. two thousand seven hundred ninety-three dollars and sixty cents (\$2,793.60) ("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 (b) and (c) 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 Applicants or Applicants' agents, or (3) revisions to the environmental document made necessary, in the City's judgment, by changes to the Applicants' project.

3. Applicants hereby agree 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, Applicants shall pay City the full amount of sixteen thousand seven hundred sixty-one dollars and sixty cents (\$16,761.60) (Consultant's Cost plus Administrative Cost) to defray the costs of preparation of the

environmental documentation and agrees to pay such additional sums as may be billed by City for preparation of the environmental documentation within 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 Applicants within 15 days from the date the Notice of Determination for the Project is filed with the County Clerk.

5. In the event Applicants abandons the Project and upon written request from Applicants 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. Applicants 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. Applicants 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. Applicants hereby acknowledge and agree 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 Applicants' 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 Applicants' applications and City retains the right to terminate or replace at any time any employee or contractor who is assigned to work on Applicants' applications.

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

9. City and Applicant hereby acknowledge and agree that the Applicants' 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 Applicants 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:

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Kimberly M. Rodrigues, MMC  
City Clerk

APPROVED AS TO FORM:

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Candice K. Lee  
City Attorney

APPLICANTS:

By:



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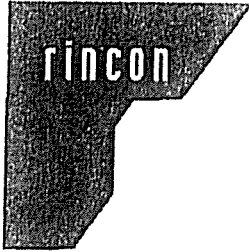
Doron Gelfand

By:



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Ossie Ben Tov



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Ventura, California 93003

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FAX 644 4240

info@rinconconsultants.com  
www.rinconconsultants.com

February 25, 2016  
Job No. 16-02535

Doug Hooper  
Assistant Director of Community Development  
City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, CA 91301-1335

**Subject: Proposal to Prepare the Cornerstone Mixed-Use Project MND**

Dear Mr. Hooper:

Rincon Consultants, Inc. is pleased to submit this proposal to prepare a Mitigated Negative Declaration (MND) for the Cornerstone Mixed-Use project, which involves a residential/commercial development on a vacant 6.8-acre site at the southeast corner of Agoura Road and Cornell Road. The project would include 35 apartment units, 23,013 square feet of retail space, 34,905 square feet of general office space, and 11,000 square feet of restaurant space. Buildings would range from 2-3 stories, with heights of up to 45 feet. The project would include subterranean parking garages. Oak trees would be removed and encroached upon as a result of the proposed development. Required entitlements include an Agoura Village Development Permit, and Oak Tree Permit, and a Tentative Parcel Map.

Rincon previously prepared an Initial Study for the project. This proposal includes: (1) Rincon's proposed work scope; (2) a schedule for completion of the MND work program; and (3) our cost estimate to complete the proposed work program. Rincon has performed similar studies for many similar projects throughout southern California.

#### **SCOPE OF WORK**

Based on the previously prepared Initial Study and direction from the City of Agoura Hills, we anticipate that an MND will be the appropriate California Environmental Quality Act (CEQA) document for the project.

Rincon's work program for the MND will be as follows:

1. **Public Review Draft MND.** Rincon will review the latest project plans, respond to internal review comments on the Initial Study, and prepare the Public Review Draft MND. Rincon will prepare the Notice of Intent (NOI) to adopt an MND, but we assume that the City of Agoura Hills will be responsible for mailing the NOI to responsible agencies and will prepare and publish a newspaper notice. We will provide one electronic (PDF) copy of the Public Review Draft IS-MND for posting on



the City's website and 12 bound copies. We assume that the City will distribute the documents to responsible agencies and file the NOI with the County Clerk.

2. **Final MND.** Upon receipt of public comments on the Public Review Draft MND, Rincon will prepare draft responses to comments for City of Agoura Hills review and prepare the Administrative Final MND. This will include the Mitigation Monitoring and Reporting Program (MMRP), which will be a table listing all mitigation measures and indicating what monitoring actions are required, the department(s) responsible for monitoring, and when monitoring is to occur. Prior to or following MND approval, we will provide a PDF of the Final IS-MND (including responses to comments and the MMRP) on CD and up to 12 bound and 18 CD copies. Rincon will prepare the Notice of Determination (NOD), though we assume that the City of Agoura Hills will file the NOD and pay applicable filing fees.
3. **Public Hearings.** Rincon will attend two public hearings on the project. If desired, we will make a presentation summarizing the environmental review process and MND conclusions. We can attend additional hearings in accordance with our standard fee schedule (attached).

### SCHEDULE

Rincon will complete the environmental review process for the project based on the following schedule:

- Public Review Draft MND to be submitted within three weeks of notice to proceed on the Administrative Draft MND
- Final MND to be submitted within two weeks of receipt of all public comments on the Public Review Draft MND

Based on these timeframes and assuming two-week turnaround of internal review work products, we believe that the environmental review process for both projects can be completed within about 2-3 months.

### COST

Our proposed budget for the above work program is \$13,968. The table on the following page shows a breakdown of costs by task. We have budgeted 14 hours of professional staff time to respond to comments on the Public Review Draft MND. Rincon assumes that the City of Agoura Hills will circulate the Public Review Draft MND to responsible agencies and handle all other CEQA-required noticing.



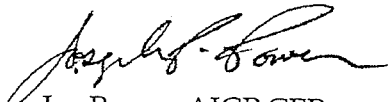
**Cornerstone Mixed-Use Project MND**  
 Cost Estimate

Tasks	Cost	Hours	Rincon Labor Hours				
			Principal \$195/hour	Sr. Prof. I \$135/hour	Prof. III \$110/hour	Graphics/ Tech Editor \$85/hour	Clerical \$65/hour
1. Public Review Draft MND	\$4,960	44	4	8	20	6	6
2. Final MND							
<i>Responses to Comments</i>	\$1,980	14	4	4	6		
<i>Mitigation Monitoring Plan</i>	\$795	7		1	6		
<i>Final MND Publication</i>	\$1,490	16		2	6	2	6
3. Public Hearings (2)	\$1,350	10		10			
4. Project Management	\$1,850	14	4	6			4
<b>Rincon Labor Total</b>	<b>\$12,425</b>	<b>105</b>	<b>12</b>	<b>31</b>	<b>38</b>	<b>8</b>	<b>16</b>
<b>Other Costs</b>							
Printing	\$1,170						
Miscellaneous Expenses	\$373						
<b>Total (Other Costs)</b>	<b>\$1,543</b>						
<b>Total (Rincon Labor + Other Costs)</b>	<b>\$13,968</b>						

This proposal is valid for a period of 30 days and is fully negotiable to meet the City's needs. We can proceed with our proposed work program upon receipt of written authorization.

We appreciate the opportunity to assist with this project. Please let me know if you have any questions about this proposal or need additional information.

Sincerely,  
**RINCON CONSULTANTS, INC.**

  
 Joe Power, AICP CEP  
 Principal