

Agenda Report Reviewed by:
City Manager 

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM

Meeting Date: February 4, 2020
To: Honorable Mayor and Honorable City Councilmembers
From: City Administration
Subject: Approval of Consultant for City List of On-Call Flood Plain Administration Consulting Services

Recommendation : That the City Council Approval of Consultant for City List of On-Call Flood Plain Administration Consulting Services.

Funding: Currently Budgeted: _____ Yes _____ No XX N/A
Net General Fund Cost: N/A
Amount: \$0

Account Code/Costs authorized in City Approved Budget (if applicable) N/A (verified by Administrative Services Department)

INTRODUCTION:

From time to time, City Staff requires the use of consultants to assist with services such as Planning, Building, Fire, Engineering, etc., that are either beyond the capacity of City staff due to the scope of the project and/or when the project analysis requires special expertise. Tonight’s item recommends City Council Approval of Consultant for City List of On-Call Flood Plain Administration Consulting Services.

BACKGROUND:

Floods are one of the most common hazards in the United States. Flood effects can be local, impacting a neighborhood or community such as the floods the City of Sebastopol has endured, especially the most recent Flood of 2019.

As development has encroached within the floodplains, loss of life, property damage, and associated costs have greatly increased. Furthermore, as development occurs, the runoff of rainwater intensifies and the frequency of flooding events also increases. In order to ensure that the City development permits shall be obtained before any construction or other development, including manufactured homes, within any area of special flood hazard to protect or reduce the effect of future floods.

DISCUSSION:

The State grants communities the police powers to adopt, administer and enforce local codes and regulations, including floodplain regulations. For the City of Sebastopol, the Building Official serves as the flood plain administrator to administer, implement, and enforce the ordinances by granting or denying development permits. The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

- Permit Review.
- Development of Substantial Improvement and Substantial Damage
- Documentation of Floodplain Development

The purpose of a flood plain administrator is to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations.

applied uniformly throughout the community to all publicly and privately owned land within flood prone, mudslide [i.e. mud/low] or flood related erosion areas.

As the Council is aware, due to the retirement of former Building Official Glenn Schainblatt, the City is continuing to use of outside consultants for building permits/plan check review; however, the City does not have a consultant agreement in place for a flood plain administrator.

The City has retained the valued services of Phillips Seabrook Associates to provide flood plain administration for applications, permits within the flood plain area, and review of the Barlow Flood Plan Operations for final adoption. This plan will be provided to the City Council for review and action at a future City Council Meeting.

Fiscal Analysis

The contract is structured pay as you go platform. Salary savings due to retirement will be offset by the cost of the consultant services on a pay as you go basis. Therefore, no budget amendment is needed for this contract.

Public Notice:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to scheduled meeting date.

Fiscal Impact

There is no direct fiscal impact associated with the recommended action tonight.

RECOMMENDATION:

Staff recommends that the City Council Approve of Consultant for City List of On-Call Flood Plain Administration Consulting Services (Phillips Seabrook Associates).

Attachment:

1. Contract

**CITY OF SEBASTOPOL
CONTRACT NO. 2020-
MASTER AGREEMENT FOR CONSULTING SERVICES
PHILLIPS SEABROOK ASSOCIATES**

THIS AGREEMENT made and entered into this _____ day of _____, 2020 by and between the City of Sebastopol, a municipal corporation located in the County of Sonoma, State of California, hereinafter referred collectively to as "CITY" and Phillips Seabrook Associates, a California Corporation with principal offices at 100 Stony Point Road, Suite 190, Santa Rosa, CA, hereinafter referred to as "CONSULTANT",

WITNESSETH

WHEREAS, CITY has the need for On-Call Floodplain Administrator services; and

WHEREAS, CITY desires to contract for such services with a private consultant; and

WHEREAS, CONSULTANT is experienced in providing such services for municipal corporations and is able to provide personnel with the proper experience and background to carry out the duties involved; and

WHEREAS CITY wishes to retain CONSULTANT for the performance of said services;

NOW, THEREFORE, in consideration of the mutual covenants, benefits and premises herein stated, the parties hereto agree as follows:

CITY, pursuant to the authority set forth at Government Code Section 36505, does hereby appoint CONSULTANT, in a contractual capacity, to perform the following services on an "on call, as needed" basis, in accordance with the terms and conditions hereinafter set forth;

- 1) **FLOODPLAIN ADMINISTRATOR** - As assigned, provide Floodplain Administrator Services as prescribed in Sebastopol Municipal Code section 15.16.
- 2) **COMPENSATION**
 - a) City shall compensate Consultant on a time and materials basis at the compensation rates specified in the Consultant's Services Rate Schedule (Exhibit B – Hourly Rate Schedule).
 - b) Consultant shall submit detailed monthly invoices reflecting all services performed during the preceding month. City agrees to pay consultant within 30 days of receipt of invoice for services.
 - c) City's obligation to pay compensation to Consultant as provided herein is contingent upon Consultant's performance of the Services pursuant to the terms and conditions of this Agreement and any amendments thereto. Notwithstanding any other provision herein, Consultant shall not be paid any compensation until Consultant has obtained a City business license.

3) **OTHER MISCELLANEOUS SERVICES** - CITY may from time-to-time have the need for other services not specifically listed in this agreement for which CONSULTANT has the necessary experience and capabilities to provide. CITY may authorize CONSULTANT to perform such selected services on an as-needed basis.

4) **PROJECT ASSIGNMENTS**

- a. The City may from time to time during the term of this agreement, solicit proposals from CONSULTANT for various City projects. Individual project assignments will be awarded by amendments to this agreement, concurrent with the term of the master contract.
- b. The City will award contract amendments for each project based upon a scope of services, work schedule, and fee proposal submitted to the City on request, and subject to approval by the City Council. For any given project, the City may elect to contract with more than one consultant based upon their field of expertise.
- c. Consultants are also encouraged to team with other pre-qualified consultants on project proposals where multiple disciplines are required.

5) **RECORDS** All records produced by CONSULTANT during the course of your work under this agreement are and at all times shall remain the property of the CITY. CONSULTANT shall assemble these records in an orderly fashion and store same, for at least three years, in a mutually agreed upon location so that they may be reasonably available to the public or to the officials of CITY as required. Copies of records shall be provided to the City from time to time, as requested.

6) **TERMINATION** - This Master Agreement may be terminated at will by either party with or without cause upon 30 days written notice.

7) **GENERAL CONDITIONS**

- a. CITY shall not be called upon to assume any liability for the direct payment of any salary, wage or other compensation to any person employed by CONSULTANT performing services hereunder for CITY.
- b. All documents, including but not limited to plans and specifications, prepared by CONSULTANT are instruments of services, only. They are not intended nor represented to be suitable for reuse on extensions of this project or any other project. Any reuse without specific permission by CONSULTANT shall be at the user's sole risk. CITY hereto agrees to save, keep and hold harmless CONSULTANT from all damages, costs or expenses in law and equity including costs of suit and attorney's fees resulting from such reuse.
- c. CONSULTANT agrees to save, keep, hold harmless and indemnify CITY and its officers, and employees from all damages, in law and equity caused by any negligent act or omission to act on the part of CONSULTANT or any of its officers, employees or subcontractors. CITY shall save, keep, hold harmless indemnify CONSULTANT from all damages suffered in the performance of the authorized by this Agreement that are not the result of wrongful acts of the CONSULTANT, its officers, employees or subcontractors.

d. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, his agents, representatives, or employees. Refer to Exhibit "A", INSURANCE REQUIREMENTS FOR CONSULTANTS, attached hereto and thereby made a part of this contract.

8) **NOTICES** - For purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CITY and the proper person to receive any notice on the CITY'S behalf is:

Larry McLaughlin, City Manager
City of Sebastopol
7120 Bodega Avenue, P.O. Box 1776
Sebastopol, CA 95473

For the purposes hereto, unless otherwise provided in writing by the parties hereto, the address of CONSULTANT and the proper person to receive any notice on the CONSULTANT'S behalf is:

Daryl A. Phillips, Principal
Phillips Seabrook Associates
100 Stony Point Road, Suite 190
Santa Rosa, CA 95401

9) **ARBITRATION** - All claims, disputes, and other matters in question between the parties to this AGREEMENT, or breach thereof, may be decided by arbitration in accordance with the then-most current rules of the American Arbitration Association, if the parties mutually agree.

10) **MISCELLANEOUS**

- a. The titles used in this agreement are for general reference only and are not a part of the Agreement.
- b. This Agreement shall be interpreted as though prepared by both parties.
- c. Any provision of this agreement held to violate any law shall not invalidate the remainder of this Agreement.
- d. This Agreement shall be interpreted under the laws of the State of California.

11) **TERM OF AGREEMENT** – This Agreement shall remain in effect for an initial term of 3 (three) years. Extensions of the agreement may be made upon mutual agreement of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the duly authorized officers the day and year first above written in this Agreement.

CITY OF SEBASTOPOL

CONSULTANT

PHILLIPS SEABROOK ASSOCIATES

Larry McLaughlin, City Manager

Daryl A. Phillips, Principal

EXHIBIT A

INSURANCE REQUIREMENTS FOR CONSULTANTS

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1187) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions liability insurance appropriate to the consultant's profession.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage **including operations, products and completed operations, as applicable**. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions liability: \$2,000,000 per occurrence.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees and volunteers** are to be covered as insureds as respects liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3. The Workers Compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under terms of this policy which arise from the work performed by the named insured.
4. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
6. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All original, signed certificates and endorsements are to be received and approved by the City prior to City's approval of the contract and commencement of work. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Subconsultants

Consultant agrees to include with all subconsultants in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subconsultant's work. Subconsultants hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the Contract Documents. Subconsultant further agrees to include these same provisions with any Sub-subconsultant. A copy of the contract indemnity and insurance provisions will be furnished to the Subconsultant upon request. The Consultant shall require all sub-consultant to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and Consultant will provide proof of compliance to the City.

EXHIBIT B

HOURLY RATE SCHEDULE
Effective January 6, 2020

<u>CLASSIFICATION</u>	<u>RATE PER HOUR</u>
Principal	\$235.00
Senior Plan Check Engineer	\$215.00
Senior Plans Examiner	\$195.00
Accessibility Specialist	\$185.00
Plans Examiner	\$175.00
Senior Building Inspector	\$145.00
Building Inspector	\$130.00
Administrative Support	\$110.00

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