



Agenda Item B.6
CONSENT CALENDAR
Meeting Date: August 21, 2018

TO: Mayor and Councilmembers

FROM: Charles W. Ebeling, Public Works Director

SUBJECT: Professional Services Agreement with MNS Engineers, Inc. for Project Management Services of the Engineering Division Land Development Review

RECOMMENDATION:

- A. Authorize the City Manager to execute an Agreement with MNS Engineers, Inc. (MNS) for Development Review Services for the Engineering Division for a total amount not-to-exceed of \$300,000 and with the termination date of June 30, 2020; and
- B. Approve a budget appropriation of \$300,000 from the General Fund Unassigned Fund Balance to account 101-5-5200-500 to support the for the Land Development Review in the Engineering Division

BACKGROUND:

The Public Works Department Engineering Division oversees the City's Engineering and the Street Lighting programs. This Division processes road encroachment and transportation permits, traffic requests, reviews development proposals, and many miscellaneous public inquires.

The Engineering Division in Public Works collaborates with the Planning and Environmental Review Department and other City Departments to review and approve private development projects throughout the City. Its main function is to ensure that new developments, which include residential, industrial and commercial projects, meet applicable City ordinances and state laws and their impacts to existing infrastructure are properly mitigated. The Engineering Division coordinates departmental review and correspondence on all land development projects, provides review of traffic concerns and requests, and reviews, issues and inspects encroachment permits for any improvements within the public right-of-way.

DISCUSSION:

A short- term consultant contract is needed to help the Engineering Division maintain the current workflow and manage future land development projects. This will allow Public Works

Engineering staff to focus on managing the Engineering Division. After a Request for Qualifications (RFQ), MNS Engineers, Inc. was selected from the Pre-Authorized Qualified Consultant List. The Public Works Department is recommending that a professional services agreement with MNS Engineers, Inc. (MNS) be executed in the amount not to exceed \$300,000 with a term that expires June 30, 2020. MNS' scope of work is to provide Development Review Services to the City of Goleta on an as needed basis. The services provided by MNS will include oversight from their local Santa Barbara office.

FISCAL IMPACTS:

The adopted FY 2018/19 Revised Budget does not include sufficient funds to cover this contract; therefore, additional appropriations are necessary in the sum of \$300,000 from the General Fund Unassigned Fund Balance to account 101-5-5200-500 to support the for the Land Development Review in the Engineering Division. Pending upon developer projects for encroachment permits and plan checks, a portion of fees may be charged to the developers, which may result in a savings of budgeted funds.

Engineering Division - Land Development Review FY 2018/19					
Account	Fund Type	FY2018/19 Adopted Budget	Encumbrance	Additional Appropriation Requested	Total Appropriation
101-5-5200-500	General Fund	\$120,000	\$120,000	\$300,000	\$300,000

Approximately \$2.6 million is available in projected General Fund Ending Unassigned Balance to cover these additional costs.

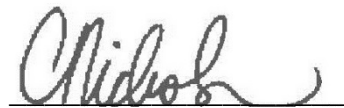
ALTERNATIVES:

The City Council may elect not to authorize the City Manager to approve this contract but doing so could cause delays in the timing of some of the Development Review projects.

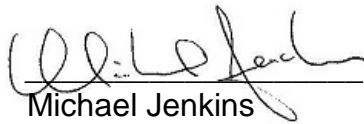
Reviewed By:

Legal Review By:

Approved By:



Carmen Nichols
Deputy City Manager



Michael Jenkins
City Attorney



Michelle Greene
City Manager

ATTACHMENTS:

1. Professional Service Agreement with MNS Engineers, Inc. for the Engineering Division Land Development Review

ATTACHMENT 1

Professional Service Agreement with MNS Engineers, Inc. for the Engineering Division
Land Development Review

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES
BETWEEN THE CITY OF GOLETA
AND
MNS ENGINEERS, INC.**

This AGREEMENT FOR PROFESSIONAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 21st day of August , 2018, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **MNS ENGINEERS, INC.**, a California Corporation (herein referred to as "CONSULTANT").

WHEREAS, the CITY has a need for professional services for the Public Works Engineering Division Land Development Review Services Project; and

WHEREAS, the CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and

WHEREAS, CONSULTANT was approved by Council on December 20, 2016 and placed on a short list of pre-approved consultants for engineering design services after review of a Request for Qualifications; and

WHEREAS, the City Council, on this 21st day of August, 2018, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

CITY and CONSULTANT agree as follows:

1. RETENTION AS CONSULTANT

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by CONSULTANT are as follows:

Professional Development Review Services in conjunction with Public Works Engineering Division Land Development Review Services Project. Services shall generally include as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

CONSULTANT shall deliver to CITY the deliverables defined in Exhibit "A."

3. COMPENSATION AND PAYMENT

(a) Maximum and Rate. The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$300,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2020, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

(b) Payment. CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager, as described in Section 5. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

4. EXTRA SERVICES

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to in writing in advance of the incurrence of extra services by CONSULTANT. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in the compensation exhibit. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

5. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY. Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

6. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT is from the date first written above to June 30, 2020, unless term of this AGREEMENT is extended or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager. All services shall be completed within the termination date of this agreement.

7. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This AGREEMENT is for professional services which are personal to CITY. Jeff Edwards, Project Manager is deemed to be specially experienced and is a key member of CONSULTANT's firm and shall be directly involved in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. This AGREEMENT may not be assigned or subcontracted without the City Manager's prior written consent.

9. INSURANCE

(a) Indemnification and Defense for Professional Service. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's duty to defend shall consist of reimbursement of defense costs incurred by CITY in direct proportion to the CONSULTANT's proportionate percentage of fault. CONSULTANT's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the CONSULTANT's percentage of fault, the parties agree to mediation with a third party neutral to determine

the CONSULTANT's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the CITY.

(b) For All Other Liabilities. Notwithstanding the foregoing and without diminishing any rights of CITY, for any liability, claim, demand, allegation against CITY arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not a design professional service, CONSULTANT shall defend, indemnify, and hold harmless CITY, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the CITY, except for the sole or active negligence of, or willful misconduct of the CITY.

(c) No Waiver. CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

10. RELATIONSHIP OF CONSULTANT TO CITY

The relationship of the CONSULTANT to CITY shall be that of an independent contractor and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

11. CORRECTIONS

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

12. TERMINATION BY CITY

CITY, by notifying CONSULTANT in writing, may upon 10 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final

statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

13. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and CONSULTANTS for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the work prepared by CONSULTANT, its employees, subcontractors, agents and consultants.

14. AUDIT OF RECORDS

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

15. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

16. CONFLICT OF INTEREST

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a

result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

17. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

18. MITIGATION OF DAMAGES

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

19. GOVERNING LAW

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

20. TAXPAYER IDENTIFICATION NUMBER

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

21. NON-APPROPRIATION OF FUNDS

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

22. MODIFICATION OF AGREEMENT

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

23. USE OF THE TERM "CITY"

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

24. PERMITS AND LICENSES

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this AGREEMENT.

25. CAPTIONS

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

26. AUTHORIZATION

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

27. ENTIRE AGREEMENT BETWEEN PARTIES

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

28. PARTIAL INVALIDITY

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

29. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:	Attention: Michelle Greene, City Manager
	City of Goleta
	130 Cremona Drive, Suite B
	Goleta, CA 93117

TO CONSULTANT: Attention: Jeff Edwards, Vice President
MNS Engineers, Inc.
201 N Calle Cesar Chavez # 300
Santa Barbara, CA 93103

30. **COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES**

This Agreement may be executed in several counterparts, which may be facsimile or electronic copies. Each counterpart is fully effective as an original, and together constitutes one and the same instrument.

In concurrence and witness whereof, this AGREEMENT has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

CONSULTANT

Michelle Greene, City Manager

James A. Salvito, President

ATTEST

Deborah Lopez, City Clerk

Greg Chelini, Vice President

APPROVED AS TO FORM



Winnie Cai, Deputy City Attorney

EXHIBIT A SCOPE OF WORK

Task 1- Project Understanding

The Consultant shall provide Land Development Review Services to the City of Goleta. Consultant shall work with the Public Works Director and Public Works staff to help change the perspective of the Engineering Division regarding Land Development Review Services. Under the directive of this project, Consultant shall manage future large Land Development projects to allow Public Works to focus on directing and managing the Engineering Division.

The Public Works Director is the Floodplain Administrator. The Floodplain Administrator and the Building Official shall enter into a memo of understanding concerning the administration and enforcement of this agreement.

The Planning and Environmental Services issues and administers Grading and Land Use Permits. Consultant shall attend two weekly meetings:

- Public Works/Planning & Environmental Review (PW & PER) weekly meeting on an as-needed basis.
- Staff Engineering Division weekly meeting, on an as-needed basis.

Consultant and Public Works staff shall jointly prepare a presentation for the City Public Works Director that will show current internal and external processes and potential improvements to the process, which will show the Land Development Review submittal process for the Engineering Division.

Task 2 - Project Assumptions

Land Development Review Tasks:

- Review land development projects (land use permit projects). Provide application completeness comments, conditions of approval and attend Public Works staff meetings for coordination.
- Coordinate with the Planning Department and Environmental Review.
- Review Engineering Permit Applications for the Public Works Department. Verify completeness and adherence to Public Works requirements.
- Provide plan check services.
 - o Storm drain, sewer and water system design
 - o Roadway and pavement structure design
 - o Sewer and water system deficiency modelling
- Inspect /Observe work conducted under the Engineering Permits, if requested.

Deliverables:

Consultant shall provide a monthly status report on Land Development Projects which include date, description, hours and personnel. Consultant shall assist staff as well in preparing a Process Binder for the City Public Works Director.

EXHIBIT B SCHEDULE OF FEES

PROJECT AND PROGRAM MANAGEMENT

Principal-In-Charge	\$250
Senior Project/Program Manager	230
Project/Program Manager	200
Assistant Project/Program Manager	175
Senior Project Coordinator	150
Project Coordinator	120

ENGINEERING

Principal Engineer	\$225
Lead Engineer	210
Supervising Engineer	190
Senior Project Engineer	175
Project Engineer	155
Associate Engineer	140
Assistant Engineer	125

SURVEYING

Principal Surveyor	\$220
Supervising Surveyor	195
Senior Project Surveyor	170
Project Surveyor	150
Senior Land Title Analyst	145
Assistant Project Surveyor	125
Party Chief	150
Chainperson	130
One-Person Survey Crew	180

CONSTRUCTION MANAGEMENT

Principal Construction Manager	\$225
Senior Construction Manager	195
Resident Engineer	180
Structures Representative	170
Construction Manager	165
Assistant Resident Engineer	150
Construction Inspector (PW)	140
Office Administrator	105

TECHNICAL SUPPORT

CADD Manager	\$150
Supervising Technician	135
Senior Technician	125
Engineering Technician	95

ADMINISTRATIVE SUPPORT

Administrative Analyst	\$110
IT Technician	105
Graphics/Visualization Specialist	95
Administrative Assistant	70

GOVERNMENT SERVICES

City Engineer	\$200
Deputy City Engineer	185
Assistant City Engineer	175
Senior Plan Check Engineer	170
Plan Check Engineer	160
Permit Engineer	140
City Inspector	125
City Inspector (PW)	140
Principal Stormwater Specialist	150
Senior Stormwater Specialist	135
Stormwater Specialist	120
Stormwater Technician	110
Certified Floodplain Manager	175
Floodplain Manager	155
Building Official	150
Senior Building Inspector	138
Building Inspector	125
Planning Director	185
Senior City Planner	160
Assistant Planner	145
Senior Grant Writer	160
Grant Writer	135