



STAFF REPORT

CITY OF YORBA LINDA

Administration Department

DATE: MAY 20, 2014

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: MARK PULONE, CITY MANAGER

SUBJECT: PROFESSIONAL SERVICES AGREEMENT – URBAN LAND INSTITUTE

RECOMMENDATION

It is recommended that the City Council authorize the City Manager to sign and approve the agreement with the Urban Land Institute (ULI) on behalf of the ULI - Orange County/Inland Empire Chapter to coordinate a Technical Assistance Panel (TAP) as it relates to the 40-acre West Bastanchury property.

BACKGROUND

During the April 1, 2014 City Council Meeting direction was given to staff to continue working on options for the West Bastanchury site development, which included preparing an informal Request For Interest (RFI) to the community at-large on how the West Bastanchury site might be used; to report back to Council on the community responses; and what benefits could be attained by using a consultant for community outreach.

DISCUSSION

While gathering information and researching various ways to move forward with the project, including the creation of the RFI, staff contemplated and met with the non-profit organization, the Urban Land Institute – Orange County/Inland Empire Chapter on April 24. The mission of the Urban Land Institute is to provide leadership in the responsible use of land and in creating and sustaining thriving communities worldwide. ULI is an independent global nonprofit supported by members representing the entire spectrum of real estate development and land use disciplines. City staff pitched our current situation at the 40-acre West Bastanchury site and ULI staff confirmed their chapter's interest in assisting us.

Their assistance would be to organize one (1) Technical Assistance Panel (TAP) of persons comprised of members of the Institute, who collectively have varied and broad experience and knowledge applicable to the particular challenges to be considered, including the planning, development and redevelopment of land and the ownership, management and financing of real property. Once the City has created and sent out our RFI letters the panelists would be provided the responses as one of many tools available to them, and they will also then tour the actual location. The panel, directly and through the ULI staff, will study the designated area; consult with selected public and private officials, representatives of other relevant organizations,

PROFESSIONAL SERVICES AGREEMENT – URBAN LAND INSTITUTE

Page | 2

and other individuals familiar with the issues or problems involved as deemed appropriate by the ULI and the City. A written report will be provided 8 weeks after completion of the panel, including their conclusions and recommendations, which will then be presented to the City Council at the close of the assignment. The TAP takes approximately three months to conduct, from the time the agreement is executed by both parties.

FISCAL IMPACT

The ULI - TAP encompasses a panel of industry experts volunteering their time, however there will be a stipend of \$15,500 required in order to compensate the ULI staff for their time and for the compilation of the final report and accompanying materials. There has been sufficient funds budgeted in the amount of \$25,000 for FY 13-14 in the City Manger's budget to expense such services.

ATTACHEMENTS

ATTACHMENT A – ULI Technical Assistance Panel (TAP) Agreement

Approved by:

Certified as to Fiscal Impacts:



Mark A. Pulone
City Manager



David J. Christian
Finance Director/Assistant City Manager

6/27

ATTACHMENT A

ULI Technical Assistance Panel (TAP) Agreement

This Technical Assistance Program Agreement ("Agreement") is entered into effective the May 20, 2014 by an agreement between ULI – The Urban Land Institute on behalf of the Urban Land Institute Orange County/Inland Empire (hereinafter "ULI") and the City of Yorba Linda ("Agency"). The foregoing entities are collectively referred to herein as the "Parties."

SERVICES; SCHEDULE OF PERFORMANCE: The Services to be provided involve a technical assistance panel ("TAP") to be held on a date to be determined and agreed upon by both parties and entitled "West Bastanchury, Yorba Linda, CA." The TAP program and the schedule of services to be provided by ULI are more particularly described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference. Unless otherwise specified in Exhibit A, services on the TAP shall begin immediately and shall be completed on or about December 31, 2014, unless extended by the parties in writing.

STANDARD OF CARE: ULI shall perform all services under this Agreement in a skillful and competent manner, consistent with all applicable laws and with the educational mission of ULI. ULI warrants that all TAP work product will not infringe upon the intellectual property rights of any third party. Except as stated above, ULI makes no express or implied warranties regarding the work product to be provided hereunder, and all work product is provided "AS IS."

COMPENSATION: Compensation for the above TAP services shall be \$15,500. The first installment of \$7,500 will be paid upon signing the agreement. The second installment of \$ 5,500 will be paid when the panel occurs. The third and final payment of \$2,500 will be paid when the sponsor receives the final report. In the event the sponsor cancels the panel assignment, the initial payment is non-refundable and sponsor shall be responsible for any additional costs incurred by ULI up to the date of cancellation.

Payment of out-of-pocket expenses are not included in the above compensation, and will not exceed \$500.

Use/Ownership of Work Product: Any work product arising from the TAP shall be considered a "work made for hire" and shall belong to the Agency, and any ULI recommendations arising out of the TAP may or may not be implemented by the Agency in its discretion. Notwithstanding the foregoing, it is further understood that ULI shall have a non-transferable royalty-free perpetual license to may make such non-commercial use of the TAP work product as it may deem desirable, and the Agency hereby specifically agrees that ULI may publish and disseminate any TAP report or any part thereof in conjunction with its programs.

TERMINATION: This Agreement may be terminated in the event of a material breach by a party, which breach is not cured within fifteen (15) days after written notice thereof from the non-breaching party. If this Agreement is terminated for any reason prior to completion of the TAP project, ULI shall be entitled to be paid in full for those services adequately completed prior to the notification of termination.

Force Majeure: Failure by either Party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control and not due to its negligence, including acts of nature, acts of terrorism, riots, labor disputes, fire, flood, explosion, and governmental prohibition. The non-declaring Party may cancel the contract without penalty if performance does not resume within 30 days of the declaration. In the event of such cancellation, ULI shall be paid the reasonable value of the services completed through the date of termination.

Notices: Notices and other communications provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by courier (UPS, Federal Express or other similar and reliable carrier), by e-mail, or by fax showing the date and time of successful receipt. Notices shall be sent to the individuals who signed the contract using the contact information

following the signatures. Each such notice shall be deemed to have been provided at the time it is actually received. By giving notice, either Party may change the contact information.

Confidential Information: Each Party, including its agents and subcontractors, to this contract may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this contract. Each Party shall presume all information received from the other Party or to which it gains access pursuant to this contract is confidential. No confidential data collected, maintained, or used in the course of performance of the contract shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the period of this Agreement or thereafter. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party; received in good faith from a third-party not subject to any confidentiality obligation to the disclosing Party; now is or later becomes publicly known through no breach of confidentiality obligation by the receiving Party; or is independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information.

Independent Contractor: ULI shall act as an independent contractor and not an agent, partner, employee, or joint venturer with the Agency. All payments by the Agency shall be made on that basis and shall be without the withholding of any taxes.

INDEMNIFICATION: To the fullest extent permitted by law, ULI shall defend, indemnify and hold the Agency, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising from the gross negligence or willful misconduct on the part of ULI, officers, directors, employees, subcontractors, or agents in connection with the performance of this Agreement. Notwithstanding the foregoing, ULI's aggregate liability for damages of any nature shall be limited to the amount of the fee under this Agreement. In no event will ULI be responsible for incidental or consequential damages arising out of the services it provides under this Agreement.

GOVERNING LAW; VENUE; ATTORNEY'S FEES: This Agreement shall be interpreted in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles. Any action brought to interpret or enforce any term of this Agreement shall be brought in a court of competent jurisdiction in the District of Columbia. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover all reasonable fees and costs incurred, including reasonable attorney's fees, as determined by the court.

ASSIGNMENT; AMENDMENT: Neither party may assign or transfer this Agreement or any rights hereunder without the written consent of the other party. This Agreement may not be modified or altered except in writing signed by both parties hereto. Except to the extent expressly provided for in the termination paragraph above, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

ENTIRE AGREEMENT; CONSTRUCTION & CAPTIONS: This Agreement represents the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

No Waiver. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Severability. In the event that a court of competent jurisdiction holds any provision of this Agreement to be invalid, such holding shall have no effect on the remaining provisions of this Agreement, and they shall continue in full force and effect.

Exhibits. The exhibits to this Agreement are incorporated by reference herein, and the Parties agree to comply with all of the terms and conditions set forth in such exhibits. To the extent that there is a conflict between an exhibit and this Agreement, the terms of this Agreement shall control.

Counterparts. This Agreement may be executed in one or more counterparts, each of which will be considered an original, and all of which taken together will constitute one and the same instrument and will be effective as of the Effective Date.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties by their authorized representatives have executed this Agreement effective as of the date first set forth above.

ULI – The Urban Land Institute, on behalf of
ULI Orange County/Inland Empire

City of Yorba Linda

Signature

Signature

Name

Name

Title

Title

2082 Business Center Dr., Ste. 280
Irvine, CA 92612
(949) 973-0041
phyllis.alzamora@uli.org

4845 Casa Loma Ave.
Yorba Linda, CA 92886
(714) 961-7110

Exhibit A

**ULI-the Urban Land Institute
Orange County/Inland Empire District Council
Technical Assistance Panel**

The City of Yorba Linda "Sponsor" wishes to obtain findings and recommendations from ULI-the Urban Land Institute Orange County/Inland Empire District Council "District Council" regarding the 40-acre site located on West Bastanchury Road. Upon approval of the accompanying TAP agreement, coordinating a Technical Assistance Panel (TAP) will commence. The TAP takes approximately three months to conduct, from the time the agreement is executed by both parties.

The District Council agrees:

1. To organize one Technical Assistance Panel of persons comprised of members of the Institute, who collectively have varied and broad experience and knowledge applicable to the particular challenges to be considered, including the planning, development and redevelopment of land and the ownership, management and financing of real property.
2. To provide panelists with information pertaining to Requests for Interests pertaining to the site; to arrange with the Sponsor's assistance a tour for the panel members to visit the location. The panel, directly and through its staff, will study the designated area; consult with selected public and private officials, representatives of other relevant organizations, and other individuals familiar with the issues or problems involved as deemed appropriate by the ULI and the Sponsor; and prepare its report, conclusions and recommendations which will be presented to the Sponsor and its invited guests in oral form at the close of the assignment.
3. To provide the Sponsor with a PowerPoint report of the study at the close of the Technical Assistance Panel, its conclusion and recommendations. To provide a written report eight weeks after the completion of the panel.

The Sponsor agrees, at their expense:

1. To work with the ULI in refining a scope of work, i.e. 5-6 questions to be addressed by the panelists in a one-day TAP, keeping in mind that this panel is comprised of ULI members, who are volunteering their time and expertise.
2. To furnish each panel member with such pertinent background data in the form of submittals to the Request for Interest, reports, plans, charts, maps, etc., as may be presently available or readily developed for the preliminary study of the panel, prior to its inspection on site.
3. To arrange, insofar as possible, to have appropriate persons, including public and private officials, representatives of the relevant organizations and businesses, and others, available for the purpose of consulting with and furnishing information to the panel on specific matters relevant to the assignment as may be necessary and advisable. These same officials shall be invited to attend the TAP presentation.
4. To provide transportation and guides to be used by the panel for any necessary inspection of the study area and its environs.
5. To secure a location with A/V and adequate space for panelists to work throughout the day of the TAP as well as for presenting the final PowerPoint at the end of the TAP day.
6. To furnish TAP panelists with refreshments in the morning and at lunch on TAP day.

Exhibit A

**ULI-the Urban Land Institute
Orange County/Inland Empire District Council
Technical Assistance Panel
Page 2**

It is understood that the fee paid by the Sponsor to the District Council will also be used to cover administrative costs of the panel preparation and to support and encourage the Institute's research and educational programs.

The Sponsor may make such use of the report as they may deem desirable. It is further understood that the Institute may make such use of the report prepared of the panel's findings and recommendations as it may deem desirable, and the Sponsor herewith specifically agrees that the Institute may publish and disseminate such report or any part thereof in conjunction with its research and educational programs.