



# City of Hermosa Beach

## Information Item

**DATE:** March 26, 2019  
**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Kim Chafin, Planning Manager  
**SUBJECT:** Contract for RHNA Monitoring and Reporting

### **Executive Summary**

The City Manager is authorizing a contract with JHD Planning, for technical expertise and assistance with the 6th cycle RHNA (Regional Housing Needs Assessment) and with the Southern California Association of (SCAG) regional growth forecast update for the 2045 Regional Transportation Plan/Sustainable Communities Strategy. The City also needs assistance with housing monitoring and annual reporting associated with the City's Housing Element program, as well as assistance regarding No Net Loss Analysis and Findings that are required pursuant to new provisions of state law when development is proposed on a site listed in the Housing Element inventory.

### **Background**

John Douglas, aka JHD Planning, was instrumental in helping the City get its 5th cycle 2013-2021 RHNA calculations revised, resulting in a housing allocation of 2 units instead of the preliminary calculation of 562 provided by SCAG (Southern California Association of Governments). SCAG is in the process of updating its Growth Forecasts now, and this will likely result in a higher RHNA number for Hermosa Beach. JHD Planning can provide assistance to monitor and influence that process. JHD Planning provides this service for several jurisdictions, and spreads the costs over those multiple jurisdictions, which results in a cost savings for everyone.

### **Fiscal Impact**

The contract is based on an annual cap of \$10,000. There are sufficient funds in the Fiscal Year 2018-19 budget to cover the remainder of this fiscal year, and a supplemental request is included in the Fiscal Year 2019-20 budget. General Plan Maintenance Funds may be used to cover the costs of these services.

**AGREEMENT FOR PROFESSIONAL SERVICES TO  
PROVIDE REGIONAL HOUSING NEEDS ASSESSMENT (RHNA)  
MONITORING AND REPORTING SERVICES**

This AGREEMENT is entered into this \_\_\_\_ day of March, 2019, by and between the CITY OF HERMOSA BEACH, a general law city a municipal corporation ("CITY") and JHD Planning LLC, a limited liability company ("CONSULTANT").

**RECITALS**

- A. The City desires technical expertise and assistance with the Southern California Association of Governments (SCAG) regional growth forecast update for the 2045 Regional Transportation Plan/Sustainable Communities Strategy and the 6<sup>th</sup> cycle Regional Housing Needs Assessment (RHNA) in order to ensure SCAG's allocations are reasonable. The City also desires assistance with housing monitoring and annual reporting associated with the City's Housing Element program. The City further desires assistance regarding No Net Loss Analysis and Findings that are required pursuant to new provisions of state law when development is proposed on a site listed in the Housing Element inventory.
- B. 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 assistance to accomplish this work.
- C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.
- D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

**NOW, THEREFORE**, based on the foregoing recitals, the City and the Consultant agree as follows:

**1. CONSIDERATION AND COMPENSATION**

- A. As partial consideration, CONSULTANT agrees to perform the work listed in the SCOPE OF SERVICES, attached as Exhibit A.
- B. As additional consideration, CONSULTANT and CITY agree to abide by the terms and conditions contained in this Agreement.
- C. As additional consideration, CITY agrees to pay CONSULTANT an estimated

cost of ten thousand dollars (\$10,000) per year for CONSULTANT's services, based on hourly rates and estimated expenses identified in Attachment A, unless otherwise specified by written amendment to this Agreement. City Manager is authorized to allow an additional amount not to exceed fifteen percent (15%) of the total estimated amount under this Agreement.

- D. CONSULTANT shall submit monthly invoices to CITY. CITY shall pay CONSULTANT all uncontested amounts set forth in CONSULTANT's invoice within 30 days after it is received.

**2. SCOPE OF SERVICES.**

- A. CONSULTANT will perform the services and activities set forth in the SCOPE OF SERVICE attached hereto as Exhibit A and incorporated herein by this reference.
- B. Except as herein otherwise expressly specified to be furnished by CITY, CONSULTANT will, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space, and facilities necessary or proper to perform and complete the work and provide the professional services required of CONSULTANT by this Agreement.

**3. PAYMENTS.** For CITY to pay CONSULTANT as specified by this Agreement, CONSULTANT must submit an invoice to CITY which lists the time expended by major task, a description of the specific tasks performed during the invoice period, and, for work that includes deliverables, the percentage of the task completed during the billing period in accordance with the schedule of compensation incorporated in "Exhibit A."

**4. TIME OF PERFORMANCE.** The services of the CONTRACTOR are to commence upon receipt of a notice to proceed from the CITY and shall continue until all authorized work is completed to the CITY's reasonable satisfaction, in accordance with the schedule incorporated in "Exhibit A," unless extended in writing by the CITY.

**5. FAMILIARITY WITH WORK.** By executing this Agreement, CONSULTANT represents that CONSULTANT has (a) thoroughly investigated and considered the scope of services to be performed; (b) carefully considered how the services should be performed; and (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.

**6. KEY PERSONNEL.** CONSULTANT's key person assigned to perform work under this Agreement is John Douglas. CONSULTANT shall not assign other persons to be in charge of the work contemplated by this Agreement or substitute subconsultants without the prior written authorization of the City.

7. TERM OF AGREEMENT. The term of this Agreement shall commence upon execution by both parties and shall expire on December 31, 2020, unless earlier termination occurs under Section 11 of this Agreement, or this Agreement is extended in writing in advance by both parties.

8. CHANGES. CITY may order changes in the services within the general scope of this Agreement, consisting of additions, deletions, or other revisions, and the contract sum and the contract time will be adjusted accordingly. All such changes must be authorized in writing, executed by CONSULTANT and CITY. The cost or credit to CITY resulting from changes in the services will be determined in accordance with written agreement between the parties.

9. TAXPAYER IDENTIFICATION NUMBER. CONSULTANT will provide CITY with a Taxpayer Identification Number.

10. PERMITS AND LICENSES. CONSULTANT will obtain and maintain during the term of this Agreement all necessary permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

11. TERMINATION.

- A. Except as otherwise provided, CITY may terminate this Agreement at any time with or without cause. Notice of termination shall be in writing.
- B. CONSULTANT may terminate this Agreement. Notice will be in writing at least 60 days before the effective termination date.
- C. In the event of such termination, the CONTRACTOR shall cease services as of the date of termination, and all finished or unfinished documents, data, drawings, maps, and other materials prepared by CONSULTANT shall, at CITY's option, become CITY's property, and CONSULTANT will receive just and equitable compensation for any work satisfactorily completed up to the effective date of notice of termination.
- D. Should the Agreement be terminated pursuant to this Section, CITY may procure on its own terms services similar to those terminated.

12. INDEMNIFICATION. CONSULTANT and CITY shall indemnify each other and their officials, officers, agents, employees and representatives from any losses incurred as a result of negligent acts, omissions, or willful misconduct of the indemnifying party, its officials, officers, employees, agents, or subcontractors in connection with the performance of the scope of work of this Agreement. The parties acknowledge that neither party has an up-front obligation to provide a legal defense to the other party in connection with this indemnification obligation. In the event that either party incurs a loss resulting from the indemnifying party's

negligent acts, omissions, or willful misconduct, the indemnifying party shall reimburse the indemnified party for its reasonable defense costs proportionate to the finally determined percentage of liability based upon the comparative fault of the indemnifying party. CONSULTANT'S liability shall be limited to the amounts available under CONSULTANT'S professional liability insurance policy.

**13. ASSIGNABILITY.** This Agreement is for CONSULTANT's professional services. CONSULTANT's attempts to assign the benefits or burdens of this Agreement without CITY's written approval are prohibited and will be null and void.

**14. INDEPENDENT CONTRACTOR.** CITY and CONSULTANT agree that CONSULTANT will act as an independent contractor and will have control of all work and the manner in which is it performed. CONSULTANT will be free to contract for similar service to be performed for other employers while under contract with CITY. CONSULTANT is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in this Agreement that may appear to give CITY the right to direct CONSULTANT as to the details of doing the work or to exercise a measure of control over the work means that CONSULTANT will follow the direction of the CITY as it relates to the end results of the work only.

**15. AUDIT OF RECORDS.**

- A. CONSULTANT agrees that CITY, or designee, has the right to review, obtain, and copy all records pertaining to the performance of this Agreement. CONSULTANT agrees to provide CITY, or designee, with any relevant information requested and will permit CITY, or designee, access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this Agreement. CONSULTANT further agrees to maintain such records for a period of three (3) years following final payment under this Agreement.
- B. CONSULTANT will keep all books, records, accounts and documents pertaining to this Agreement separate from other activities unrelated to this Agreement.
- C. CONSULTANT shall comply with all reporting and financial provisions of the Strategic Growth Council's Sustainable Communities Grant Program as required by the City.

**16. CORRECTIVE MEASURES.** CONSULTANT will promptly implement any corrective measures required by CITY regarding the requirements and obligations of this Agreement. CONSULTANT will be given a reasonable amount of time as determined by the City to

implement said corrective measures. Failure of CONSULTANT to implement required corrective measures shall result in immediate termination of this Agreement.

## 17. INSURANCE REQUIREMENTS.

- A. The CONSULTANT, at the CONSULTANT's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies:
1. Workers Compensation Insurance as required by law. The Consultant shall require all subcontractors similarly to provide such compensation insurance for their respective employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the CITY at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against the CITY, its officers, agents, employees, and volunteers for losses arising from work performed by the CONTRACTOR for City.
  2. General Liability Coverage. The CONSULTANT shall maintain commercial general liability insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.
  3. Automobile Liability Coverage. The CONSULTANT shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the CONSULTANT arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired, and non-owned vehicles, in an amount of not less than five hundred thousand dollars (\$500,000) combined single limit for each occurrence.
- B. Endorsements. Each general liability shall be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California, or which is approved in writing by City, and shall be endorsed as follows. CONSULTANT also agrees to require all contractors, and subcontractors to do likewise.
1. "The CITY, its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the

- CONSULTANT, including materials, parts, or equipment furnished in connection with such work or operations.”
2. This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the CITY, including any self-insured retention the CITY may have, shall be considered excess insurance only and shall not contribute to this policy.
  3. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  4. The insurer waives all rights of subrogation against the CITY, its elected or appointed officers, officials, employees, or agents.
  5. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents, or volunteers.
  6. The insurance provided by this policy shall not be suspended, voided, or canceled except after thirty (30) days written notice has been received by the CITY.
- C. CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against Contractor arising out of the work performed under this agreement. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.
- D. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the CITY's option, the CONSULTANT shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- E. The CONSULTANT shall provide certificates of insurance with original endorsements to the CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the CITY on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the CITY at all times during the term of this Agreement.
- F. Failure on the part of the CONSULTANT to procure or maintain required insurance shall constitute a material breach of contract under which the CITY may terminate this Agreement pursuant to Section 11 above.

- G. The commercial general liability policies required by this Agreement shall allow City, as additional insured, to satisfy the self-insured retention ("SIR") and/or deductible of the policy in lieu of the Consultant (as the named insured) should Consultant fail to pay the SIR or deductible requirements. The amount of the SIR or deductible shall be subject to the approval of the City Attorney and the Finance Director. Consultant understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by Consultant as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should City pay the SIR or deductible on Consultant's behalf upon the Consultant's failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, City may include such amounts as damages in any action against Consultant for breach of this Agreement in addition to any other damages incurred by City due to the breach.

**18. USE OF OTHER CONSULTANTS.** CONSULTANT must obtain CITY's prior written approval to use any consultants while performing any portion of this Agreement. Such approval must include approval of the proposed consultant and the terms of compensation. Consultants list in Exhibit A are deemed approved by City and no additional written authorization is required.

**19. FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE.** The acceptance by the CONSULTANT of the final payment made under this Agreement shall operate as and be a release of the CITY from all claims and liabilities for compensation to the CONSULTANT for anything done, furnished or relating to the CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of the CITY'S check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the CITY shall not constitute, nor be deemed, a release of the responsibility and liability of the CONSULTANT, its employees, sub-consultants and agents 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 the CITY for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

**20. CORRECTIONS.** In addition to the above indemnification obligations, the CONSULTANT shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the CITY, and the cost thereof shall be charged to the CONSULTANT. In addition to all other available remedies, the City may deduct the cost of such correction from any retention amount held by the City or may withhold payment otherwise owed CONSULTANT under this Agreement up to the amount of the cost of correction. CITY'S deduction shall be limited to the reasonable cost of making corrections and shall not exceed CONSULTANT'S budget for the task requiring correction.



**21. NON-APPROPRIATION OF FUNDS.** Payments to be made to CONSULTANT by CITY for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that CITY does not appropriate sufficient funds for payment of CONSULTANT'S services beyond the current fiscal year, the CITY shall promptly notify CONSULTANT to stop work and shall terminate this Agreement.

**22. NOTICES.** All communications pertaining to this Agreement to either party by the other party will be deemed made when received by such party at its respective name and mailing or email address as follows and receipt of communication is acknowledged in writing or by email:

<b>CITY</b>	<b>CONSULTANT</b>
City of Hermosa Beach Community Development Dept. 1315 Valley Drive Hermosa Beach, CA 90254 ATTN: Ken Robertson, Director krobertson@hermosabch.org	John Douglas JHD Planning LLC PO Box 474 Shaver Lake, CA 93664 john@jhdplanning.net

Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

**23. SOLICITATION.** CONSULTANT maintains and warrants that it has not employed nor retained any company or person, other than CONSULTANT's bona fide employee, to solicit or secure this Agreement. Further, CONSULTANT warrants that it has not paid nor has it agreed to pay any company or person, other than CONSULTANT's bona fide employee, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Should CONSULTANT breach or violate this warranty, CITY may rescind this Agreement without liability.

**24. THIRD PARTY BENEFICIARIES.** This Agreement and every provision herein is generally for the exclusive benefit of CONSULTANT and CITY and not for the benefit of any other party. There will be no incidental or other beneficiaries of any of CONSULTANT's or CITY's obligations under this Agreement.

**25. INTERPRETATION.** This Agreement was drafted in, and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this agreement will be in Los Angeles County.

**26. ENTIRE AGREEMENT.** This Agreement, and its Attachments, sets forth the entire understanding of the parties. There are no other understandings, terms or other agreements expressed or implied, oral or written.

**27. RULES OF CONSTRUCTION.** Each Party had the opportunity to independently review this Agreement with legal counsel. Accordingly, this Agreement will be construed simply, as a whole, and in accordance with its fair meaning; it will not be interpreted strictly for or against either Party.

**28. AUTHORITY/MODIFICATION.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written amendment with signatures of all parties to this Agreement. CITY's city manager, or designee, may execute any such amendment on behalf of CITY.

**29. ACCEPTANCE OF FACSIMILE OR ELECTRONIC SIGNATURES.** The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

**30. FORCE MAJEURE.** Should performance of this Agreement be impossible due to fire, flood, explosion, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the Parties' control, then the Agreement will immediately terminate without obligation of either party to the other.

**31. TIME IS OF ESSENCE.** Time is of the essence to comply with dates and schedules to be provided.

**32. ATTORNEY'S FEES.** The parties hereto acknowledge and agree that each will bear his or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith.

**33. STATEMENT OF EXPERIENCE.** By executing this Agreement, CONSULTANT represents that it has demonstrated trustworthiness and possesses the quality, fitness and capacity to perform the Agreement in a manner satisfactory to CITY. CONSULTANT represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private consultants, and experience in dealing with public agencies all suggest that CONSULTANT is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

**34. OWNERSHIP OF DOCUMENTS.** It is understood and agreed that the City shall own all documents and other work product of the Consultant, except the Consultant's notes and workpapers, which pertain to the work performed under this Agreement. The City shall have the sole right to use such materials in its discretion and without further compensation to the

Consultant, but any re-use of such documents by the City on any other project without prior written consent of the Consultant shall be at the sole risk of the City. Documents belonging to the City shall be transmitted to the City immediately and without delay upon any termination of this Agreement.

35. DISCLOSURE REQUIRED. (City and Consultant initials required at one of the following paragraphs)

By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a "consultant" for the purposes of the California Political Reform Act because Consultant's duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18701(a)(2) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City's Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City's Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant's disclosure obligations in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_

Consultant Initials \_\_\_\_\_

OR

By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a "consultant" for the purpose of the California Political Reform Act because Consultant's duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18701(a)(2)(A) and is otherwise not serving in staff capacity in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_


Consultant Initials \_\_\_\_\_


PSA with JHD Planning LLC for  
RHNA Monitoring/Reporting

IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF HERMOSA BEACH

CONSULTANT

  
\_\_\_\_\_  
Suja Lowenthal, City Manager

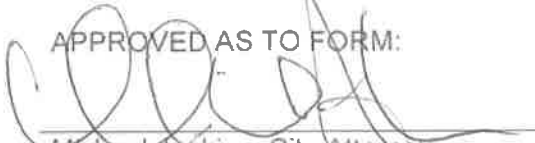
  
\_\_\_\_\_  
By: John Douglas, Principal

ATTEST:

  
\_\_\_\_\_  
Elaine Doerfling, City Clerk

555-84-9316  
\_\_\_\_\_  
Taxpayer ID No.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael Jenkins, City Attorney

## Scope of Work

We will provide assistance to City staff related to the following tasks. Other optional tasks can also be provided if desired.

- 2045 SCAG Growth Forecast Update. Coordination with City staff and SCAG on the regional growth forecast update. SCAG's growth forecast is the basis for the 2045 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) and the 6<sup>th</sup> cycle Regional Housing Needs Assessment (RHNA).
- 6<sup>th</sup> Cycle RHNA. Coordination with City staff and SCAG regarding the 6<sup>th</sup> cycle RHNA. The RHNA will determine the amount of new housing Hermosa Beach must accommodate through appropriate land use and zoning designations during the 2021-2029 Housing Element planning period. Assistance may include monitoring SCAG meetings and consultation with the City to ensure that its interests are fairly considered by SCAG.
- Housing Monitoring and Annual Reporting. Assistance to City staff regarding monitoring of Housing Element program implementation and housing production, and preparation of annual reports for submittal to the Department of Finance and HCD.
- No Net Loss Analysis and Findings. New provisions of State law require specific findings when development is proposed on a site listed in the Housing Element inventory. We will assist City staff in reviewing proposed development projects and analyzing no net loss requirements.
- State Housing Law. Advise City staff regarding changes in State law and how City policies and regulations may need to be amended to ensure compliance.

## Schedule

We are prepared to commence work immediately upon authorization to proceed. Specific timelines for individual tasks will be determined in consultation with City staff to ensure that the City's objectives are met.

## Budget

A budget not to exceed \$10,000 per year is proposed with work billed on a time-and-materials basis at \$150/hour. We do not charge for travel expenses. Other reimbursable expenses are billed at actual cost with no markup. It is also our policy to donate 10% of our consulting fees to charities serving the jurisdictions where we work.