

Project Name: On Call RDA Fiscal Consulting

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE REDEVELOPMENT AGENCY FOR THE CITY OF GOLETA  
AND  
ROSENOW SPEVACEK GROUP, INC.**

THIS AGREEMENT is made and entered into this 30<sup>th</sup> day of November, 2009, by and between **THE REDEVELOPMENT AGENCY FOR THE CITY OF GOLETA**, a municipal corporation (herein referred to as "RDA"), and **ROSENOW SPEVACEK GROUP, INC.**, (herein referred to as "Consultant").

**WHEREAS**, Consultant represents that they are sufficiently experienced and capable of providing the services agreed to herein and are familiar with the needs of the RDA; and

**WHEREAS**, Consultant was invited by RDA to and did submit a proposal to perform the services identified herein; and

**WHEREAS**, based on a submittal of qualifications and proposal and Consultant's prior experience working with the RDA on this project the Director of Redevelopment and Neighborhood Services and Public Safety has recommended the Consultant for the award of this Agreement without engaging in a competitive selection process as recommended by the Goleta City Purchasing Ordinance; and

**WHEREAS**, the Goleta Municipal Code 3.24.103 authorizes the City Manager to execute this agreement based on the value of the Agreement being less than \$30,000.

RDA and Consultant agree as follows:

**1. RETENTION AS CONSULTANT**

RDA 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:

On-call professional financial consulting services in conjunction with Redevelopment Agency's efforts in community development. Services shall generally include planning and implementation services, as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein. RDA shall issue written assignments

to Consultant from the scope of work on an as needed basis. Prior to commencing any work on an assignment, Consultant shall provide a written estimate of the time and fees necessary to complete the assignment.

### 3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** The total compensation payable to Consultant by RDA for any and all services under this Agreement **SHALL NOT EXCEED** the sum of \$10,000 (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 December 31, 2010, after which any change in said rates and expenses must be approved in writing by RDA's Project Manager (RDA 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 RDA with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to RDA's Project Manager. 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 RDA's approval of the invoice.

### 4. EXTRA SERVICES

RDA shall pay Consultant for those RDA authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to in advance. Unless RDA 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. RDA PROJECT MANAGER AND SERVICES BY RDA

The services to be performed by Consultant shall be accomplished under the general direction of, and coordinate with, RDA's "Project Manager", as that staff person is designated by RDA from time to time, and who presently is Vytautas Adomaitis. Project Manager shall have the authority to act on behalf of the RDA 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, 2011, 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 paragraph 10 below, and (ii) RDA gives written authorization to proceed with the work provided by RDA's Project Manager. All services shall be completed within 10 calendar days following the notice to proceed.

## **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 RDA. RDA 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 RDA. RDA 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 RDA. Jim Simon is deemed to be specially experienced and is a key member of Consultant's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to, RDA on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, RDA may terminate this Agreement. This Agreement is not assignable by Consultant without RDA's prior consent in writing.

## **9. HOLD HARMLESS AND INDEMNITY**

(a) **Hold Harmless for Consultant's Damages.** Consultant holds RDA, its elected officials, officers, agents, and employees, harmless from all of Consultant's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to Consultant, to Consultant's employees, to Consultant's contractors or subcontractors, or to the owners of Consultant's firm, which damages, losses, injuries or liability occur during the work required under this Agreement, or occur while Consultant is on RDA property, or which are connected, directly or indirectly, with Consultant's performance of any activity or work required under this Agreement.

**(b) Defense and Indemnity of Third Party Claims/Liability.** Consultant shall investigate, defend, and indemnify RDA, its elected officials, officers, agents, and employees, from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of Consultant or any of Consultant's officers, agents, employees, representatives, subconsultants, or subcontractors, or the willful misconduct of Consultant or any of Consultant's officers, agents, employees, representatives, subconsultants, or subcontractors, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions concerning any activity, product or work required under this Agreement, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related thereto.

**(c) No Waiver.** RDA 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 RDA, or the deposit with RDA, of any insurance certificates or policies described in Section 10.

**10. INSURANCE**

Consultant shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI.

Commercial general liability at least as broad as	
ISO CG 0001 (per occurrence) .....	1,000,000
(general aggregate).....	2,000,000
Commercial auto liability at least as broad as	
ISO CA 0001 (per accident) .....	1,000,000
Errors and omissions liability (per claim and aggregate) .....	1,000,000
Workers' compensation .....	Statutory

All insurance required by this section shall apply on a primary basis. Consultant agrees that it will not cancel or reduce said insurance coverage. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect RDA may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, RDA may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

Auto liability insurance shall cover owned, non-owned and hired autos. If Consultant owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy.

At all times during the term of this Agreement, Consultant shall maintain on file with RDA a certificate of insurance, in a form acceptable to RDA, showing that the aforesaid policies are in effect in the required amounts. The general liability policy shall contain or be endorsed to contain a provision including the Indemnitees as additional insureds. Consultant shall promptly file with RDA such certificate or certificates and endorsements if applicable. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

No policy required by this section shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnitees.

All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

#### **11. RELATION OF THE PARTIES**

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

#### **12. CORRECTIONS**

In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work that may be disclosed during RDA'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 RDA, and the cost thereof shall be charged to Consultant or withheld from any funds due to Consultant hereunder.

#### **13. TERMINATION BY RDA**

RDA, 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 RDA 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.

**14. 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 RDA 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 RDA'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 RDA 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 RDA for any defect or error in the work prepared by Consultant, its employees, subcontractors, agents and consultants.

**15. 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 RDA for examination of all its records with respect to all matters covered by this Agreement and will permit RDA 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.

**16. 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.

**17. CONFLICT OF INTEREST**

Consultant is unaware of any RDA 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 RDA employee or official.

**18. 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.

**19. 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.

**20. 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.

**21. TAXPAYER IDENTIFICATION NUMBER**

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

**22. 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 RDA funds. In the event RDA 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.

**23. 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 RDA and Consultant.

**24. USE OF THE TERM "RDA"**

Reference to "RDA" in this Agreement includes RDA Manager or any authorized representative acting on behalf of RDA.

**25. 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.

**26. 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.

**27. 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.

**28. 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.

**29. 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.

**30. 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 RDA:                      Attention: City Manager  
   City of Goleta  
   130 Cremona Drive, Suite B  
   Goleta, CA 93117




TO CONSULTANT: Jim Simon, Principal  
Rosenow Spevacek Group, Inc.  
309 West 4<sup>th</sup> Street  
Santa Ana, CA 92701

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

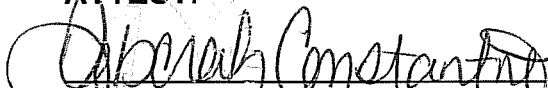
**CITY OF GOLETA**


  
Daniel Singer, City Manager

**ROSENOW SPEVACEK GROUP, INC.**

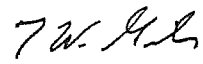
  
Jim Simon  
Principal/Corporate Secretary

**ATTEST:**

  
Deborah Constantino, City Clerk

  
Felise Acosta  
Principal/Vice President

**APPROVED AS TO FORM**

  
Tim W. Giles, City Attorney

## EXHIBIT A

### Scope of Services

Consultant shall complete any of the following activities, under the direction of RDA or Goleta Redevelopment Agency ("Agency") staff, including:

#### Special Project Activities

1. **Project Management/Specific Project Activities:** Consultant may provide the RDA or Agency with the following services: analysis of specific project economics; analysis to the project amendments and mergers; the development of schedules and budgets related to implementation projects or activities; and the preparation of project feasibility studies. In conjunction with the analysis of a specific project's economics, Consultant may also develop alternative financing schemes that will assist the RDA or Agency in achieving their desired project goals. Such projects may include development of an update to the Goleta Revitalization Plan.
2. **Redevelopment Solicitation Efforts:** The consultant may assist staff in soliciting proposals or qualifications for development, including pre-development marketing, preparation of promotional materials, identifying potential prospects, and arranging introductory meetings with potentials users.
3. **Development Pro Forma Analysis/Negotiation:** Upon direction of RDA or Agency staff, the Consultant may analyze proposed development projects by the use of real estate pro forma analysis. Additionally, a financial review of a project conducted by the Consultant may include a cost benefit analysis, which will estimate potential revenue generation and required service costs (to Agency staff and the RDA). The goals of the analysis will be to provide assistance to the RDA or Agency in determining the financial viability of a proposed project and in determining the degree of participation by the RDA or Agency. The Consultant may also be available to assist with developer negotiations.
4. **Disposition and Development/Owner Participation Agreements:** The Consultant is available to provide advice, negotiate, assist with drafting, and/or review of such agreements. The Consultant is highly knowledgeable and experienced in the negotiation and implementation of DDA's and OPA's, and has also had extensive experience in the implementation and monitoring of such agreements.
5. **Agency/Planning Commission/Stakeholders Meetings:** Jim Simon or other Consultant team members are available to make all necessary presentations to RDA/Agency staff or other parties with regard to the projects assigned.
6. **Project Team Meetings:** When necessary, Jim Simon and other Consultant team members responsible for a given assignment will be available to meet with RDA/Agency staff to coordinate and plan activities related to the assignment.

## **Project Financing**

1. **Tax Increment Financings:** The Consultant may provide fiscal consulting services as needed for the issuance of tax increment bonds or other securities.
2. **Finance Strategies:** The Consultant may develop financing strategies for redevelopment or community development implementation activities, including assisting staff determine what projects to fund, timing of projects, and advice regarding the prudent use of bond proceeds, housing funds, land/real estate proceeds, and tax increment funds.

## **Site Assembly Coordination and Real Estate Services**

The Consultant may provide the Agency with a full range of site assembly and real estate services including the following:

1. **Site Assembly Assistance:** The Consultant has the resources and experience to provide site assembly project management for any acquisition project the RDA/Agency may be involved in from time to time.
2. **Relocation and Acquisition Services:** The Consultant may provide relocation and/or acquisition services necessary to implement this work program, either with in-house experts or subconsultants.
3. **Property Acquisition/Negotiation:** The Consultant may provide property acquisition and negotiation services under the direction of RDA/Agency staff. Such activities may include reviewing title reports, meeting and negotiating with property owners and tenants, coordination with attorneys and relocation consultants, document preparation, and escrow coordination.

## **Redevelopment Agency Administration**

The Consultant may assist Agency staff with all other administrative activities as needed. Specifically, the Consultant may provide all necessary administrative support including, but not limited to, the following:

1. **Agenda Materials:** The Consultant may, upon request, prepare Agency staff reports or provide back-up materials as needed.
2. **Accounting Procedures:** The Consultant may assist Agency staff staff in the areas of Agency staff cash flow management and State Controller procedures and requirements.
3. **General Administrative Services:** The Consultant may assist Agency staff with all other administrative matters. Such services include but are not limited to the Agency filing and document control systems, and public hearing notice preparation and

mailings.

4. **Monitoring Deed Restrictions:** Redevelopment Law requires Agency staff to expand and improve the supply of affordable housing and to record deed restrictions to assure continued income level compliance. The Consultant may monitor these deed restrictions on an ongoing basis.

### **Implementation Agreements**

1. **Development Planning and Analysis:** Consultant may provide development planning and analysis for specific project undertakings. Typically, this would involve preparation of a Design for Development for adoption by Agency staff that sets the basic parameters for proposed development. The options available to RDA/Agency staff for development of a specific site can be analyzed to determine the optimal outcome and a recommended project.

2. **Development Pro Forma Analysis/Negotiation:** Consultant may provide project financial pro formas for potential redevelopment projects to assist RDA/Agency staff in determining the financial viability of a project and determine the degree of participation which may be required by RDA/Agency staff. The Consultant may also be available to assist with developer negotiations as needed.

3. **Agreement Preparation:** The Consultant may assist RDA/Agency staff and legal counsel in the drafting of agreements (typically, Disposition and Development Agreements or Owner Participation Agreements). These agreements outline the responsibilities of both the proposed owner/developer and RDA/Agency staff.

4. **Agreement Processing:** The Consultant may prepare the back-up materials, agenda staff report, and summary report (required by redevelopment law) and assure that proper noticing and hearings are held in conformance with law.

### **Affordable Housing Projects**

1. **Comprehensive Strategy:** The Consultant may assist with the preparation of a comprehensive affordable housing strategy. This could be done in coordination with the updating of the Five-Year Implementation Plan.

2. **Specific Project/Site Identification:** Agency staff has specific requirements to rehabilitate and develop new affordable housing. It may behoove Agency staff to identify specific projects and sites that could be utilized for this purpose.

3. **Developer Selection/Negotiation:** The Consultant may assist in the developer selection process, as well as in negotiating terms and agreements for future housing development.

4. **Financing:** The Consultant may assist the RDA or Agency procure funding for the development of affordable housing.

## EXHIBIT B

### Schedule of Fees

Charge for the services provided in the above scope of work shall be invoiced on a time-and materials basis, for a total aggregate fee not-to-exceed \$10,000.

Fees would be charged in accordance with the following rate schedule:

#### 2009 Hourly Billing Rates

Principal / Director	\$ 195
Senior Associate	\$ 160
Associate	\$ 140
Senior Analyst	\$ 110
Analyst	\$ 100
Research Assistant	\$ 90
Technician	\$ 70
Clerical	\$ 60
Reimbursable Expenses	Cost plus 10%

The following expenses are excluded and not recoverable:

Mileage (except direct costs related to blight field surveys), parking, standard telephone/fax expenses, general postage or incidental copies.

The following expenses are recoverable:

Messenger services, overnight shipping/express mail costs and teleconferencing services. RSG also charge for copies of reports, documents, notices, and support material in excess of five (5) copies.

Invoices shall identify tasks completed to date, hours expended and the hourly rate.