



## **CITY COUNCIL STAFF REPORT**

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**TO:** Honorable Mayor and City Council                      **DATE:** January 22, 2018

**FROM:** Matthew Bronson, City Manager

**PREPARED BY:** Gayla R. Chapman, Administrative Services Director

**SUBJECT:** Consulting Services for Bond Disclosure Advisor

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### **RECOMMENDATION**

Adopt the Resolution approving the Consulting Services Agreement for Bond Disclosure Advisor for the 2005 Tax Allocation Bonds and authorize the City Manager to sign the agreement.

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### **BACKGROUND**

For the past several years, Albert Peché of A. M. Peché & Associates, LLC has been the City's consultant for bond disclosure services. Staff is recommending that the City enter into a new contract with Mr. Peché through the completion of the 2018-19 disclosure report. Disclosure reporting is required annually on bond debt.

The cost of services previously was \$2,000 plus expenses. For the new contract, the amount of the services will increase by \$250 to \$2,250 plus expenses. The contract is covered under the Administrative Redevelopment Property Tax Trust Fund payments the Successor Agency receives annually based upon the Recognized Obligation Payment Schedule (ROPS) submitted to the State Department of Finance.

### **FISCAL IMPACT**

The associated costs of the bond disclosure services will be paid from the administrative fees received by the Successor Agency as listed on the ROPS.

### **ALTERNATIVES**

The City Council, sitting as the Successor Agency, has the following alternatives to consider:

1. Authorizing the City Manager to enter into the Consulting Services Agreement for Bond Disclosure, or
2. Do not authorize the City Manager to enter into the Consulting Services Agreement for Bond Disclosure and provide staff direction.

### **PUBLIC NOTIFICATION**

The agenda was posted in accordance with the Brown Act.

### **ATTACHMENTS**

1. Resolution and Consulting Services Agreement.
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RESOLUTION NO. SA-18-\_\_

**A RESOLUTION OF THE CITY COUNCIL FOR CITY OF GROVER BEACH  
IN ITS FUNCTION AS SUCCESSOR AGENCY APPROVING  
A CONSULTING AGREEMENT FOR DISCLOSURE REPORTING SERVICES  
FOR THE 2015 TAX ALLOCATION BONDS**

**WHEREAS**, Successor Agency is under continued disclosure obligation for the 2015 Tax Allocation Bonds in place of the abolished Improvement Agency; and

**WHEREAS**, there are no in-house recourses for such disclosure services; and

**WHEREAS**, staff has identified A.M. Peché & Associates LLC as the most qualified entity to provide such disclosure reporting services for the Successor Agency.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF GROVER BEACH IN ITS FUNCTION AS A SUCCESSOR AGENCY AS FOLLOWS:**

**THAT** the City of Grover Beach Successor Agency enter into a consulting services agreement for Disclosure Reporting Services (Exhibit A to this Resolution) with A.M. Peché & Associates LLC.

**THAT** the Mayor is authorized to execute the Agreement and any other documents necessary for the purpose of disclosure.

On motion by \_\_\_\_\_, seconded by \_\_\_\_\_, and on the following roll-call vote, to wit:

AYES: Council Members  
NOES: Council Members  
ABSENT: Council Members  
ABSTAIN: Council Members

the foregoing Resolution was **PASSED, APPROVED**, and **ADOPTED** at a regular meeting of the City Council of the City of Grover Beach, California this 22<sup>nd</sup> day of January, 2018.

**\*\* D R A F T \*\***

\_\_\_\_\_  
JOHN P. SHOALS, MAYOR

ATTEST:

\_\_\_\_\_  
DONNA L. McMAHON, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
DAVID P. HALE  
CITY ATTORNEY

## CONSULTING SERVICES AGREEMENT

This **CONSULTING SERVICES AGREEMENT** (the "Agreement") is made and entered into as of the 25<sup>th</sup> day of January, 2018 ("Effective Date"), by and between the **SUCCESSOR AGENCY TO THE IMPROVEMENT AGENCY FOR THE CITY OF GROVER BEACH** (the "Successor Agency") with Staff from the City of Grover Beach (the "City") and **A. M. Peché & Associates LLC** ("Consultant").

Upon the following terms and conditions of this Agreement, the Successor Agency desires to retain Consultant to perform the following:

### 1. PROFESSIONAL SERVICES.

Consultant will provide services under the terms and conditions of this Agreement. The services will consist of serving in the capacity as Disclosure Advisor for the Continuing Disclosure Program for the Grover Beach Improvement Agency's Series 2005 Allocation Bonds (the "2005 Bonds"). The 2005 Bonds require annual reports with information listed under Section 3 "Provision of Annual Reports" of the Continuing Disclosure Agreement signed by the former Improvement Agency as part of the closing documents for the 2005 Bonds. The Consultant has prepared Disclosure Reports under a previous fee agreement that was signed by the Improvement Agency on September 15, 2014. This Agreement will replace the prior agreement and commence with the 2016-17 Disclosure Report. Services by the Consultant will commence on the start date and will terminate as provided for in Section 4 of this Agreement.

### 2. INVOICING AND PAYMENT.

As sole compensation for the performance of the services, the Successor Agency will pay Consultant a fee of \$2,250.00 for each year, plus approved costs and expenses. Expenses will include meals and travel costs for travel to the Successor Agency reimbursed at current IRS mileage reimbursement rate. Telephone and miscellaneous expenses will be billed at a flat fee of \$75 per year. Consultant will invoice the Successor Agency on an annual basis. The Successor Agency will pay each such invoice no later than thirty (30) days after its receipt. Consultant will receive no royalty or other remuneration for the production or distribution of any products developed by the Successor Agency or by Consultant in connection with or based upon the services. Consultant will not be entitled to receive any vacation or illness payments, or to participate in any plans, arrangements, insurance or other similar benefits that the Successor Agency makes or may make available to the Successor Agency's employees.

### 3. OWNERSHIP OF WORK PRODUCT.

Consultant agrees that any and all ideas, designs, drawings, notes, computer programs, algorithms, documents, information, materials, improvements and inventions made, conceived, developed, created or first reduced to practice in the performance of the services under this Agreement shall be the sole and exclusive property of the Successor Agency (the "Work Product"). Consultant further agrees that the Successor Agency is and shall be vested with all

right, title and interest in the Work Product. The provisions of this Section 3 shall survive the termination of this Agreement for any reason.

**4. TERM.**

The term of this Agreement shall be through the completion of the 2018-19 Report. Either party may terminate this Agreement upon 14-days notice to the other party for any reason or no reason. In the event the Successor Agency terminates this Agreement, Consultant shall cease all work immediately after receiving notice from the Successor Agency unless otherwise advised by the Successor Agency and shall invoice the Successor Agency of all time and costs incurred up to such termination date. The timing of such invoice and payment shall be made without regard to the annual scheduling set forth in Section 2 of this Agreement. If neither party terminates this Agreement, this Agreement shall continue in effect until time mutually agreed upon by the parties.

**5. INDEPENDENT CONTRACTOR.**

Consultant is an independent contractor and is not an agent or employee of the Successor Agency. Consultant has no authority to bind the Successor Agency by contract or otherwise. Consultant will perform the professional services under the general direction of the Administrative Services Director or their designee, subject to the requirement that Consultant shall at all times comply with applicable law. Consultant acknowledges the need to obtain a Business Tax Certificate from the City and will apply for such certificate within 10 business days of the signing the Consulting Services Agreement if one has not already been issued.

**6. WARRANTY.**

Parties recognize the fact that the services require specialized skills and experience on the part of the Consultant. Consultant warrants that the services hereunder will be of a professional quality conforming to generally accepted industry standards and practices and that Consultant shall maintain all required licenses and certification necessary for performance of the services under this contract.

Successor Agency has read the Continuing Disclosure Certificates for the 2005 Bonds. Successor Agency warrants that it will provide Consultant with accurate information that can be relied upon to complete the Disclosure Reports. In addition to any of the information expressly required to be provided under the Continuing Disclosure Certificate for the 2005 Bonds, the Successor Agency shall provide such further information, if any, as may be necessary to make the specifically required information, in the light of the circumstances under which they are made, not misleading. This is specifically required under the Continuing Disclosure Certificates for the 2005 Bonds.

The Successor Agency acknowledges that the Consultant will not independently verify any of the data or information provided to the Consultant, nor will the Consultant conduct a detailed investigation of the affairs of the Successor Agency to determine the accuracy or completeness of the information gathered in the preparation of the Disclosure Report.

**7. NON-MUNICIPAL ADVISOR**

In providing Disclosure preparation, Consultant is not serving in the role of a Municipal Advisor, or provide services as a Municipal Advisor, unless engaged by Successor Agency in a separate agreement in that role.

**8. INDEMNIFICATION BY CONSULTANT.**

Consultant shall indemnify, hold harmless and defend the Successor Agency and each of its officers, officials, agents, volunteers, and employees from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the Successor Agency, the Consultant or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of negligent or willful acts of the Consultant. This Section 8 shall survive termination or expiration of this Agreement.

**9. GOVERNING LAW.**

This Agreement will be governed by and construed in accordance with the laws of the State of California excluding that body of law pertaining to conflict of laws.

**10. NOTICE.**

All notices, including notices of address changes, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed to the addresses listed below:

- (a) **Successor Agency to the City of Grover Beach:**  
City Manager, 154 South Eighth Street, Grover Beach, CA 93433.
- (b) **Consultant:**  
A.M. Peché & Associates LLC, Attn: Albert M. Peché, 1025 Morton Street,  
Alameda, CA 94501-3904

**11. INSURANCE REQUIREMENT.**

(a) Consultant shall obtain and maintain during the performance of any services under this Agreement the following insurance coverage issued by a company satisfactory to the City Clerk, unless the Administrative Services Director, Gayla R. Chapman, 805-473-4550, waives, in writing, the requirement that Consultant obtain and maintain such insurance coverage.

- 1. Commercial general liability insurance including a contractual liability endorsement in an amount not less than \$1,000,000 per occurrence limit and no less than \$2,000,000 in the aggregate - for bodily injury and property damage for each claimant for general liability;

2. Business automobile liability insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability;

3. Errors and omissions insurance to a minimum coverage of \$1,000,000, with neither Consultant nor listed sub-consultants having less than \$1,000,000 individually;

4. In the event that Consultant has any employees, Worker's compensation insurance in compliance with the laws of the State of California, including employer's liability insurance in an amount not less than \$1,000,000 per claimant.

(b) Consultant shall, prior to performance of any services, file with the City Clerk a certificate of insurance, on a City approved form, certifying that the above insurance coverage's shall remain in effect at all time during the term of this Agreement, or any extension thereof.

(c) Consultant agrees that all insurance coverage's shall be provided by a California admitted insurance carrier with an A.M. Best rating of A-7 or better and shall bear endorsements providing that the policies may not be canceled or modified without thirty (30) days' prior written notice to the City Clerk. City shall not approve or accept any endorsement if the endorsement contains "best effort" modifiers or if the insurer is relieved from the responsibility to give such notice.

(d) Consultant agrees that the commercial general liability and business automobile liability insurance policies shall be endorsed to name City, its City Council, officers and employees as additional insured and to provide that the coverage's provided to City shall be primary and not contributing to or in excess of any existing City insurance coverage's.

(e) All insurance standards applicable to Consultant shall also be applicable to Consultant's subcontractors. Consultant may utilize subcontractors to prepare reports. Consultant agrees to maintain appropriate agreements with subcontractors and to provide proper evidence of coverage upon receipt of a written request from the City Clerk.

## **12. SEVERABILITY.**

In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

## **13. ASSIGNMENT.**

Consultant may not assign Consultant's rights or delegate Consultant's duties under this Agreement without the prior written consent of the Successor Agency. Any attempted assignment or delegation without such consent will be void.

**14. WAIVER.**

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

**15. EQUITABLE REMEDIES.**

Because the services are personal and unique and because Consultant will have access to the Successor Agency's confidential information, the Successor Agency will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief without prejudice to any other rights and remedies that the Successor Agency may have for a breach of this Agreement.

**16. ENTIRE AGREEMENT.**

This Agreement constitutes the complete agreement between the parties and supersedes all previous agreements or representations, whether written or oral, with respect to the subject matter described herein. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. It is expressly agreed that any terms and conditions of Consultant's invoices shall be superseded by the terms and conditions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed the **CONSULTING SERVICES AGREEMENT** as of the date set forth in the first paragraph hereof.

**SUCCESSOR AGENCY TO THE  
IMPROVEMENT AGENCY FOR THE  
CITY OF GROVER BEACH**

**CONSULTANT**

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Matthew Bronson  
City Manager

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Albert M. Peché, Manager  
A. M. Peché & Associates LLC