



## AGENDA REPORT

**Meeting Date:** January 6, 2015

**Item Number:** D-12

**To:** Honorable Mayor & City Council

**From:** Raj Patel, Assistant Director of Community Development / City Building Official

**Subject:** APPROVE AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND VENEKLASEN ASSOCIATES, INC. FOR CONSULTING SERVICES RELATED TO CONSTRUCTION NOISE AND VIBRATION MONITORING FOR THE 9876 WILSHIRE BOULEVARD – BEVERLY HILTON REVITALIZATION – PHASE 3 – WALDORF ASTORIA BUILD-OUT PROJECT; AND

AUTHORIZE A PURCHASE ORDER APPROVAL IN THE AMOUNT OF \$295,000 FOR THESE PROFESSIONAL CONSULTING SERVICES.

**Attachments:** 1. Agreement

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### **RECOMMENDATION**

Staff recommends that the City Council move to approve an Agreement between the City of Beverly Hills and Veneklasen Associates to provide construction noise and vibration monitoring services for Phase 3 of the 9876 Wilshire Boulevard – Beverly Hilton Revitalization Project and to authorize a purchase order approval in the amount of \$295,000 for the contracted services. Funds for this consultant are fully paid for by the developer as required by the project's Conditions of Approval.

### **INTRODUCTION**

Staff recommends that Veneklasen Associates be hired to provide the City with professional construction noise and vibration monitoring services for Phase 3 of the 9876 Wilshire Boulevard - Beverly Hilton Revitalization Project. Veneklasen Associates provided noise and vibration monitoring services during Phases 1 and 2 of the project. The selection of Veneklasen Associates was reviewed and jointly agreed upon by the Beverly Hills Unified School District and the City to provide these services. This is a multi-year contract with Veneklasen Associates with the period of performance of January 15, 2015 – January 14, 2017.

**DISCUSSION**

Staff recommends that the City Council move to approve an Agreement and a purchase order for Veneklasen Associates to perform noise and vibration monitoring services in the amount of \$295,000. Veneklasen Associates will provide monitoring of construction activities relative to noise and vibration impacts on the residential properties in the immediate vicinity and noise impacts to El Rodeo Middle School as necessary in order to oversee the developer's compliance with the "Conditions of Approval" for the 9876 Wilshire Boulevard – Beverly Hilton Revitalization Project.

This request for approval is for the third phase of the Beverly Hilton Revitalization project which is the completion of the Waldorf Astoria structure. The first phase of the project, Demolition was completed in September 2014. Phase two, Shoring and Excavation is currently in progress with anticipated completion by February 2015. Phase three, the Build-Out, construction and completion of the Waldorf Astoria will begin as shoring and excavation is being completed. The total not to exceed amount for all three phases is \$340,000 for the life of the project.

<b>Beverly Hilton Revitalization Project</b>	<b>Duration</b>	<b>Agreement Amount</b>
Phase 1 - Demolition	May 2014 – Sept. 2014	\$13,500
Phase 2 – Shoring & Excavation	Sept. 2014 – Feb. 2015	\$31,500
Phase 3 – Build-Out of Waldorf Astoria	Jan. 2015 – Jan. 2017	\$295,000
<b>Total Not To Exceed Amount</b>		<b>\$340,000</b>

The noise and vibration monitoring consultant provides services in accordance with the City's land use approvals for the project. The developer shall pay for the Construction Management Plan Coordinator who shall be hired by and work for the City oversee compliance with certain conditions related to noise and vibration.

Noise and vibration monitoring services are a component of construction mitigation measures developed as part of the Environmental Impact Report (EIR) as incorporated into the entitlement approvals, which are broken down into different phases including start up, demolition, excavation, grading, shoring, and building development throughout the entire construction development process. This contract covers work during Phase 3 of development.

**FISCAL IMPACT**

There is no fiscal impact to the City as a result of the approval of this Agreement and Purchase Order. All costs associated with the performance of these professional services will be fully covered by the developers of the 9876 Wilshire Boulevard – Beverly Hilton Revitalization Project.

  
Susan Healy Keene  
\_\_\_\_\_  
For Approved By

# **Attachment 1**

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND  
VENEKLASEN ASSOCIATES, INC. FOR CONSULTING  
SERVICES RELATED TO CONSTRUCTION NOISE AND  
VIBRATION MONITORING FOR THE 9876 WILSHIRE  
BOULEVARD – BEVERLY HILTON REVITALIZATION – PHASE  
3 – WALDORF ASTORIA BUILD-OUT PROJECT

NAME OF CONSULTANT: Veneklasen Associates, Inc.

RESPONSIBLE PRINCIPAL OF CONSULTANT: Steve Martin, Ph.D., P.E., Senior Associate

CONSULTANT'S ADDRESS: 1711 Sixteenth Street  
Santa Monica, CA 90404  
Attention: Steve Martin, Ph.D., P.E., Senior Associate

CITY'S ADDRESS: City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210  
Attention: Raj Patel, City Building Official

COMMENCEMENT DATE: January 15, 2015

TERMINATION DATE: January 14, 2017

CONSIDERATION: Not to exceed \$295,000 based on the rates set forth in Exhibit B, including reimbursables

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND  
VENEKLASEN ASSOCIATES, INC. FOR CONSULTING  
SERVICES RELATED TO CONSTRUCTION NOISE AND  
VIBRATION MONITORING FOR THE 9876 WILSHIRE  
BOULEVARD – BEVERLY HILTON REVITALIZATION – PHASE  
3 – WALDORF ASTORIA BUILD-OUT PROJECT

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and Veneklasen Associates, Inc., (hereinafter called "CONSULTANT").

RECITALS

A. CITY desires to have certain services and/or goods provided as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein.

B. CONSULTANT represents that it is qualified and able to perform the Scope of Works.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Scope of Work. CONSULTANT shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. City shall have the right to order, in writing, changes in the Scope of Work. Any changes in the Scope of Work by CONSULTANT must be made in writing and approved by both parties. The cost of any change in the Scope of Work must be agreed to by both parties in writing.

Section 2. Time of Performance. CONSULTANT shall commence its services under this Agreement upon receipt of a written notice to proceed from CITY. CONSULTANT shall complete the performance of services by the Termination Date set forth above and/or in conformance with the project timeline established by the City Manager or his designee.

The City Manager or his designee may extend the time of performance in writing for two additional one-year terms or such other term not to exceed two years from the date of termination pursuant to the same terms and conditions of this Agreement.

Section 3. Compensation.

(a) Compensation. CITY agrees to compensate CONSULTANT for the services and/or goods provided under this Agreement, and CONSULTANT agrees to accept in full satisfaction for such services, a sum not to exceed the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein.

(b) Expenses. CONSULTANT shall be entitled to reimbursement only for those expenses expressly set forth in Exhibit B. Any expenses incurred by CONSULTANT which are not expressly authorized by this Agreement will not be reimbursed by CITY.

(c) **Additional Services.** CITY may from time to time require CONSULTANT to perform additional services not included in the Scope of Work. Such requests for additional services shall be made by CITY in writing and agreed upon by both parties in writing.

**Section 4. Method of Payment.** CITY shall pay CONSULTANT said Consideration in accordance with the method and schedule of payment set forth in Exhibit B, attached hereto and incorporated herein.

**Section 5. Independent Contractor.** CONSULTANT is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as herein set forth. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

**Section 6. Assignment.** This Agreement shall not be assigned in whole or in part, by CONSULTANT without the prior written approval of CITY. Any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

**Section 7. Responsible Principal(s).**

(a) CONSULTANT's Responsible Principal set forth above shall be principally responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible by CONSULTANT shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

**Section 8. Personnel.** CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

**Section 9. Permits and Licenses.** CONSULTANT shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

**Section 10. Interests of Consultant.** CONSULTANT affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

**Section 11. Insurance.**

(a) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single

limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by CONSULTANT in performing the Scope of Work required by this Agreement.

(3) A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of One Million Dollars (\$1,000,000) per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by CITY. Further, CONSULTANT agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(4) Workers' compensation insurance as required by the State of California.

(b) CONSULTANT shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(d) CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

(e) At all times during the term of this Agreement, CONSULTANT shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONSULTANT shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general and auto liability insurance shall contain an endorsement naming the CITY and the Beverly Hills Unified School District ("DISTRICT") as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(f) The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(g) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, DISTRICT, and every officer, employee and agent of CITY and DISTRICT, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 13. Termination.

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement. CONSULTANT shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 14. CITY's Responsibility. CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT's Scope of Work.

Section 15. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Records and Inspections. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years. City shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

Section 17. Changes in the Scope of Work. The CITY shall have the right to order, in writing, changes in the scope of work or the services to be performed. Any changes in the scope of work requested by CONSULTANT must be made in writing and approved by both parties.

Section 18. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 19. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing

Section 19. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded

Section 20. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

Section 21. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 22. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 23. CITY Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

Section 24. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the \_\_\_\_ day of \_\_\_\_\_ 2014, at Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

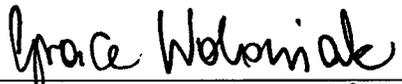
\_\_\_\_\_  
LILI BOSSE  
Mayor of the City of Beverly Hills, California

ATTEST:

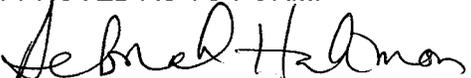
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BYRON POPE  
City Clerk

CONSULTANT: VENEKLASEN  
ASSOCIATES, INC.

  
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JIM GOOD  
Managing Principal

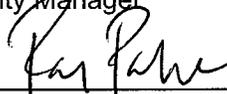
  
GRACE ~~WDOZIAK~~ WDOVIK  
Chief Financial Officer

APPROVED AS TO FORM:

  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
JEFFREY C. KOLIN  
City Manager

*For*   
SUSAN HEALY KEENE  
Director of Community Development

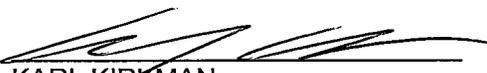
  
KARL KIRKMAN  
Risk Manager

EXHIBIT A  
SCOPE OF WORK

CONSULTANT shall perform the following services in connection with construction noise monitoring and mitigation services for 9876 Wilshire Boulevard-Beverly Hill Revitalization – Phase 3 – Waldorf Astoria build-out project (“Project”):

*Initial Review*

1. Meet with the Project representatives to discuss Project phasing and impact concerns.
2. Review Project-related documentation including proposed site plans, construction phasing, and logistics reports (to be furnished by CITY).

*Build Out Noise and Vibration Monitoring*

1. Provide noise and vibration monitoring equipment to monitor construction activity at one sensitive location between January 15, 2015 and January 14, 2017. The monitoring equipment shall provide alerts indicating when the measured noise or vibration levels exceed established baseline noise levels.
2. Provide noise monitoring equipment to monitor construction activity at El Rodeo School through between January 15, 2015 and January 14, 2017.
3. Download the data collected (either in person or remotely) with the monitoring system:
  - a. On a weekly basis and cross-reference the data against any issued complaints.
  - b. Provide, on a monthly basis, weekly reports documenting the measured noise data.
4. Visit the Project site every week to observe the monitoring equipment and document its condition.
5. Provide a final written report summarizing the measurements.

EXHIBIT B

SCHEDULE OF PAYMENT AND RATES

**Schedule of Fees and Rates**

CITY shall compensate CONSULTANT in an amount not-to-exceed \$295,000 for services required by this Agreement based on the hourly rates set forth in this Exhibit. This not-to-exceed amount includes professional services and equipment.

*Additional Services outside the Scope set forth in Exhibit A are available on an hourly basis upon written request of CITY.*

Noise and vibration monitoring services beyond January 14, 2017. Should the start of construction activities begin later than January 15, 2015, requiring noise monitoring after January 15, 2017, the additional not-to-exceed fee to continue all services is \$9,500 per month.

**SCHEDULE OF HOURLY RATES**

Effective December 15, 2014

CATEGORY	BILLING RATE/HOUR
Principal	\$200
Associate Principal	\$170
Senior Associate / Associate I	\$160
Senior Associate / Associate II	\$125
Associate III	\$115
Associate IV	\$105
Associate V	\$90
Associate VI	\$75
Associate VII	\$70

*Acoustic modeling is charged at a rate of \$175 per hour.*

**Schedule of Payment**

CONSULTANT shall submit an itemized statement to CITY for its services performed, which shall include documentation setting forth in detail a description of the services rendered, hours of service, and reimbursable expenses. CITY shall pay CONSULTANT the undisputed amount of such billing within thirty (30) days receipt of the same.



EXHIBIT C

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONSULTANT'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: CONSULTANT agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of CONSULTANT's officers, employees, agents or others employed by CONSULTANT while engaged by CONSULTANT in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
 Authorized Insurance Representative

AGENCY: \_\_\_\_\_  
 \_\_\_\_\_

TITLE: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 \_\_\_\_\_