

# STAFF REPORT



ITEM NO. **11**

CITY OF OCEANSIDE

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DATE: January 10, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF AMENDMENT 1 TO PROFESSIONAL SERVICES AGREEMENT WITH GEOPACIFICA, INC., FOR GEOTECHNICAL REVIEW AND PLAN CHECK SERVICES**

## **SYNOPSIS**

Staff recommends that the City Council approve Amendment 1 in the amount of \$52,000 to the Professional Services Agreement with Geopacifica, Inc., of Oceanside for ongoing geotechnical review and plan check services and authorize the City Manager to execute the amendment.

## **BACKGROUND**

City Council approved a two-year professional services agreement in the amount of \$120,000 annually with Geopacifica, Inc., at its September 20, 2006 meeting. The scope of services includes reviewing, evaluating and providing recommendations for geotechnical studies for development projects. Other services include providing public assistance and information regarding geotechnical and geologic issues affecting the community, providing geotechnical support during construction, and evaluation, inspection and recommendations for mining activities within the City. The plan check services include working with City staff to review engineering plans and reports for compliance with state, City, regional and local standards.

## **ANALYSIS**

Due to the understaffing of the Engineering Subdivision business unit over the past year, it has been necessary to use outside engineering services for geotechnical review and plan check services. The department has recently filled several engineer vacancies and plans to train one of the new hires to check plans and write conditions, thereby lessening the dependency on outside consultants.

Strict guidelines for hours worked by the Geopacifica personnel, along with careful budgeting of available funds, will allow this increase in the professional services agreement to be adequate for the balance of FY 06-07.

**FISCAL IMPACT**

The FY 2006-07 budget for the Public Works Subdivision business unit (101.414700) included \$240,000 for consultant fees. There are sufficient funds available in the permanent salary budget due to the cost savings for the vacancies of the City Engineer and Traffic Engineer positions. Both of these positions will be vacant for a minimum of six months this fiscal year, for a savings of approximately \$87,000 in salary. Therefore, there are enough funds to execute this amendment.

**CITY ATTORNEY'S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the City Council approve Amendment 1 in the amount of \$52,000 to the Professional Services Agreement with Geopacifica, Inc., of Oceanside for ongoing geotechnical review and plan check services and authorize the City Manager to execute the amendment.

PREPARED BY:



Marty Eslambolchi  
City Development Engineer

SUBMITTED BY:



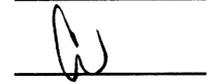
Barry E. Martin  
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Interim Deputy City Manager



Peter A. Weiss, Public Works Director



Nita McKay, Financial Services Director



**CITY OF OCEANSIDE  
AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: Geotechnical Review and Plan Check Services  
(101) 414700 & 414705**

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Geopacifica, Inc., hereinafter designated as "CONSULTANT."

**RECITALS**

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement dated September 20, 2006, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein;

WHEREAS, the parties desire to amend the Agreement to provide for changes and/or modifications to the compensation clause due to increased work load

**AMENDMENT**

NOW, THEREFORE, as set forth herein, the parties hereto do mutually agree that the Agreement shall be amended as follows:

1. SECTION 7, COMPENSATION, IS HEREBY AMENDED BY ADDING AN AMOUNT NOT TO EXCEED \$52,000 FOR THE REMAINDER OF FY 2006-2007.

The total amount of compensation for the work required by the Professional Services Agreement, including this amendment, shall not exceed \$172,000 for FY 2006-2007.

2. Except as expressly set forth in this Amendment, the Agreement shall remain in full force and effect and is hereby ratified and reaffirmed.

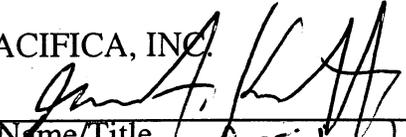
**Geotechnical Review and Plan Check Services 101.414700 & 101.414705**

**SIGNATURES.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

GEPACIFICA, INC.

By:

  
Name/Title \_\_\_\_\_  
James F. Knowlton, President

By:

\_\_\_\_\_  
Name/Title

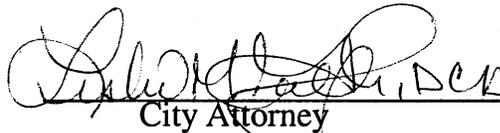
\_\_\_\_\_  
Employer ID No.

CITY OF OCEANSIDE

By:

\_\_\_\_\_  
Barry E. Martin, Interim City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

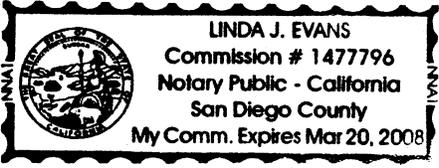
State of California

County of San Diego

On 12-18-06 before me, Linda J. Evans, Notary Public  
Date Name and Title of Office (e.g., "Jane Doe, Notary Public")

personally appeared James F. Knowlton  
Name(s) of Signer(s)

- personally known to me
- (or proved to me on the basis of satisfactory evidence)



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Linda J. Evans, Notary Public  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document** amendment to  
 Title or Type of Document: Professional Services Agreement  
Electrical Review & Plan Check Services  
 Document Date: N/A Number of Pages: 2

Signer(s) Other Than Named Above: Darryl E. Martin, Interim City Manager

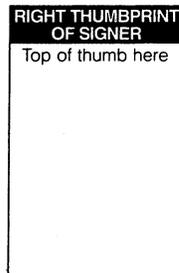
**Capacity(ies) Claimed by Signer(s)**

- Signer's Name: James F. Knowlton
- Individual
  - Corporate Officer — Title(s): President
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: Nepacife, Inc.

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**CITY OF OCEANSIDE**

**PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: Geotechnical Review and Plan Check Services  
(101) 414700 & 414705**

THIS AGREEMENT is made and entered into this 20th day of September, 2006, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and GEOPACIFICA, hereinafter designated as "CONSULTANT."

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. **SCOPE OF WORK.** The project is more particularly described as follows: Review, respond to, and accept geotechnical reports prepared by outside consultants in connection with design plans in support of development activities; evaluate and advise the City Engineer with regard to geotechnical issues surrounding discretionary projects and CEQA guidelines and requirements; provide public assistance and information regarding geotechnical and geologic issues affecting the community; provide assistance with and coordination of hazardous materials and site clean-up within the City; provide geotechnical support, both in the field and in the office, regarding geotechnical issues during construction; evaluate, inspect and provide recommendations for mining activities with the City.

In addition, project includes providing plan check services; work with City staff to review engineering plans and reports for compliance with state, city, regional, and local standards.

2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City Engineer. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the City Engineer. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured

## **Geotechnical Review and Plan Check Services**

against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

### **4. LIABILITY INSURANCE.**

4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance

## **Geotechnical Review and Plan Check Services**

coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

- 4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct, negligent acts, errors or omissions or wrongful acts of conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection

## **Geotechnical Review and Plan Check Services**

with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortuous acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$120,000 per year. Compensation to the CONSULTANT shall be per the attached fee schedule, not to exceed \$95 per hour for geotechnical services or \$110 per hour for plan check services as needed, for a maximum of eight (8) hours per day and twenty-four (24) hours per week. Hourly billing rate is inclusive of all services, including but not limited to, mileage, overhead, supplies, and all internal discussions among the CONSULTANT'S staff. Review work shall be performed at the designated location within City Hall, unless otherwise specified by the City Engineer.

Billing shall not include travel time. No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the City Engineer.

CONSULTANT shall provide a bi-weekly invoice which shall include all charges to date and the remaining contract balance.

8. **NO CONFLICT OF INTEREST.** CONSULTANT shall not perform geotechnical or civil engineering design services in connection with any private project within the City of Oceanside unless such services are performed pursuant to the Scope of Work defined in this agreement or unless the City Engineer has given prior written authorization.
9. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the City Engineer.
10. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated

**Geotechnical Review and Plan Check Services**

understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

- 11. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

- 12. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

- 13. **TERM OF AGREEMENT.** This Agreement shall take effect on the date approved by Council and be valid for a period of two (2) years. Three (3), one-year extensions may be granted, based upon acceptable performance, for a total of five (5) years.

- 14. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures this 20th day of September, 2006.

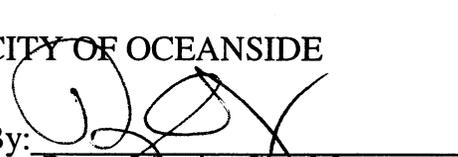
GEOPACIFICA, INCORPORATED

By:

  
James F. Knowlton, President

CITY OF OCEANSIDE

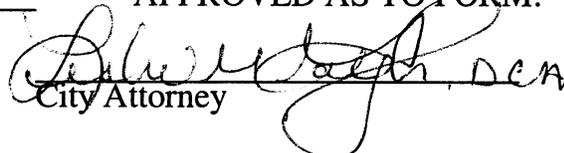
By:

  
Barry Martin, City Manager

33-0207383

Employer ID No.

APPROVED AS TO FORM:

  
City Attorney

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

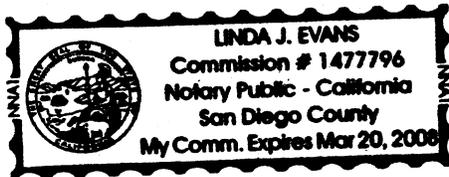
State of California

County of San Diego

On 8-30-06 before me, Linda J. Evans, Notary Public  
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)

personally appeared James F. Knudsen  
Name(s) of Signer(s)

- personally known to me
- (or proved to me on the basis of satisfactory evidence)



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Linda J. Evans, Notary Public  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: 101-414700 & 414705 Professional Services Agreement  
Electrical Review and Punchlist Services

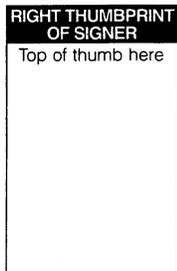
Document Date: 8-30-06 Number of Pages: 6

Signer(s) Other Than Named Above: Barry Martin, Interim City Manager

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

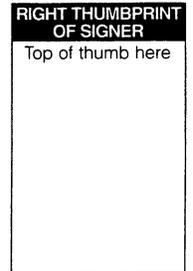
- Individual
- Corporate Officer — Title(s): President
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: Hexaflex, Inc.

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_