

STAFF REPORT



ITEM NO. **13**

CITY OF OCEANSIDE

DATE: January 24, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR STORM WATER QUALITY REVIEW**

SYNOPSIS

Staff recommends that the City Council approve a two-year professional services agreement with PBS&J of Los Angeles in an amount not to exceed \$50,000 annually, \$100,000 total, with the possibility of three one-year extensions for a total of five years, for storm water quality review services related to development projects, and authorize the City Manager to execute the agreement.

BACKGROUND

A request for proposal was sent to four consultant firms on July 19, 2006, and only PBS&J of Los Angeles responded.

Storm water quality review services include review of, response to, and acceptance of the following in connection with development projects: Storm Water Mitigation Plan (SWMP), Runoff Assessment Reports (RAR), Operation and Maintenance Manuals (O&M), Storm Water Facility Maintenance Agreements (SWFMA), Best Management Practices (BMP), Maintenance Cost Estimate and Hydrology/Drainage Studies. In addition, PBS&J will be responsible for creating and maintaining a database of projects, SWMP preparation and review procedures manual and review grading plans for BMP conformity with approved SWMP.

ANALYSIS

Consultant services will be utilized only on an as-needed basis per the contract. Compensation for PBS&J's services is \$135 per hour, for a maximum of eight hours per day and twenty-four hours per week, not to exceed \$50,000 per year. The term of the agreement is two years with the option of three one-year extensions for a total of five years.

FISCAL IMPACT

The operating budget for subdivision (101.414700) included \$240,000 for consultant fees. Therefore, sufficient funding exists to provide for the cost of the service.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be provided.

COMMISSION OR COMMITTEE REPORT

Does not apply.

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 a two-year professional services agreement with PBS&J of Los Angeles in an amount not to exceed \$50,000 annually, \$100,000 total, with the possibility of three one-year extensions for a total of five years, for storm water quality review services related to development projects, and authorize the City Manager to execute the agreement.

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

PROFESSIONAL SERVICES AGREEMENT

**PROJECT: Storm Water Quality Review Services
(101) 414700**

THIS AGREEMENT is made and entered into this ____ day of _____, 2006, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and PBS&J, 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 of, response to, and acceptance of the following in connection with development projects:

- Storm Water Mitigation Plan (SWMP)
- Runoff Assessment Reports (RAR)
- Operation and Maintenance Manuals (O&M)
- Storm Water Facility Maintenance Agreements (SWFMA)
- BMP Maintenance Cost Estimates
- Hydrology/Drainage Studies

In addition, the CONSULTANT shall be responsible for creation and/or the maintenance of the following:

- A database of projects with approved SWMP's that list, at a minimum, name of project, name and contact information of project proponent, location of project, file number, type of Best Management Practice (BMP), BMP maintenance frequencies, security type and value, and security contact information.
- A SWMP preparation and review procedures manual, which provides guidelines, procedures, and sample documents for SWMP, O&M, and RAR preparation, staff review, and approval process.
- Review grading plans for BMP conformity with approved SWMP.

Turn around time for review of technical reports shall be a maximum of ten (10) working days. All review comments shall be provided by CONSULTANT in electronic format and sent to the City Engineer via e-mail. A status log of all reports received by the CONSULTANT shall be sent via e-mail to the City Engineer on a weekly basis. The log shall contain, at a minimum, the following information: date

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received, project name, file number, review's name, date returned, and date approved (if applicable).

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 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
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General limit project specific aggregate	\$ 2,000,000
<u>Automobile Liability Insurance</u>	\$ 1,000,000

*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 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.

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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 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 \$50,000 per year. Compensation to the CONSULTANT shall be per the attached fee schedule, not to exceed \$135 per hour, 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.

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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 storm water services in the 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 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 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.

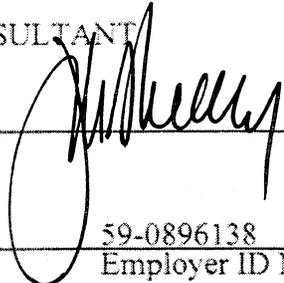
12. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
13. **TERM OF AGREEMENT.** This Agreement shall be valid for a period of two (2) years. Three (3), one-year extensions may be granted, based upon acceptable performance, for a total of five (5) years.

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13. **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 _____ day of _____, 2006.

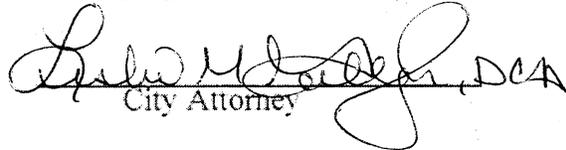
CONSULTANT

By:  _____
59-0896138
Employer ID No.

CITY OF OCEANSIDE

By: _____
Barry Martin, Interim City Manager

APPROVED AS TO FORM:

 _____
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

This certificate is attached to a six page document entitled City of Oceanside, Professional Services Agreement

ACKNOWLEDGMENT CERTIFICATE

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 30th day of November, 2006, by John S. Shearer, as Executive Vice-President for PBS&J, who is personally known to me.



Jane C. Nelson
Notary Public, State of Florida

