ITEM NO. 13

STAFF REPORT

CITY OF OCEANSIDE

DATE: January 5, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department /Planning Division

SUBJECT: **APPROVAL OF AMENDMENT 3 TO PROFESSIONAL SERVICES AGREEMENT FOR THE OCEANSIDE SUBAREA PLAN SUPPORT**

SYNOPSIS

Staff recommends that the City Council approve Amendment 3 in the amount of $95,951 to the professional services agreement with Foothill Associates for additional work to complete the Subarea Plan and present the final document to City Council in Spring 2011, and authorize the City Manager to execute the amendment.

BACKGROUND

In 1993, the coastal California Gnatcatcher was listed as threatened under the Federal Endangered Species Act (ESA). This listing affected a wide range of public and private projects in the City of Oceanside due to the significant amount of gnatcatcher habitat – coastal sage scrub (CSS) – that exists in the City. To proceed, projects in areas with gnatcatchers would have to completely avoid impacts or "take" CSS habitat or seek Federal authorization and permits. Several other species, such as the Least Bell's Vireo – a small song bird that utilizes wetland habitat – have been listed under the Federal and California ESA since the early 1990s. Currently, approximately twenty-five plant and animal species that are listed or proposed for listing occur or are associated with habitats in the City.

In 1991, the California Natural Communities Conservation Act (NCCP) was adopted, and the NCCP coastal sage scrub program was initiated in Southern California. In the initial phases of the program, conservation guidelines were developed, and the U.S. Fish and Wildlife Service adopted a special rule regarding the gnatcatcher and CSS pursuant to Section 4(d) of the Federal ESA. Under the Section 4(d) guidelines each jurisdiction in San Diego County participating in the NCCP CSS program were allowed to impact or "take" five percent of the existing CSS habitat in the jurisdiction. The City of Oceanside has been a participant in this program since 1993 and was allowed to take 75.4 acres of CSS.

To fulfill its commitment to the NCCP program, the City has been a participant in the North County Multiple Habitat Conservation Program (MHCP). The MHCP is a

subregional multiple habitat planning effort that encompasses land within the cities of Oceanside, Carlsbad, Encinitas, Escondido, San Marcos, Solana Beach, and Vista. This plan is being developed through a cooperative effort by the seven cities and the San Diego Association of Governments (SANDAG). A similar plan known as the Multiple Species Conservation Program (MSCP) was developed in the central and southern portion of the County. The MHCP Subregional Plan and Final Environmental Impact Statement/Report (EIS/EIR) were adopted and certified by the SANDAG Board of Directors on March 28, 2003. Each of the seven jurisdictions will implement their respective portion of the MHCP via Citywide Subarea Plans. The City of Carlsbad adopted their plan in November 2004, and Oceanside is the next in line for adoption.

ANALYSIS

Work on the Subarea Plan (SAP) commenced in 1996, whereby the City of Oceanside contracted with SANDAG to prepare Phase 1 of the Subarea Plan, which consisted of numerous field surveys that laid the groundwork for the SAP. This $75,000 contract was paid for solely by mitigation funds from the Pacific Coast Plaza Project. Phase II work on the SAP, which consisted of writing a rough draft of the findings of Phase I was initiated in 1998, and consisted of a contract with SANDAG for $49,995. These funds also came from mitigation funds from various projects in the City. In 2001, the MHCP and the SAPs for various North County Cities underwent environmental review per the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). The MHCP was eventually approved in 2003 by SANDAG, however, various revisions were required for the City's Subarea Plan based on comments received from the public and Wildlife Agencies at that time. Based on input from the Wildlife Agencies at that time, the City was also required to prepare an Open Space Management Plan (OSMP) prior to SAP approval. Foothill Associates was contracted to prepare the OSMP in 2004, with a $48,763 grant from the U.S. Fish and Wildlife Service. In 2005, the City contracted with AMEC Environmental for $33,400 to address various comments received during environmental review.

AMEC Environmental reduced their Environmental staff so the City contracted with Foothill Associates in 2007 to finalize the City's Open Space Management Plan and provide SAP support with a contract amount of $28,650. Based on extensive comments from new staff at the U.S. Fish and Wildlife Service and California Department of Fish and Game, the City embarked on the various contract amendments attached to the staff report. In 2008 Amendment 1 in the amount of $87,258 was approved to include additional tasks necessary to respond to the extensive and voluminous comments received from the new staff at the U.S. Fish and Wildlife Service and California Department of Fish and Game. In 2009 Amendment 2 in the amount of $79,036 was approved to provide for changes and/or modification to the scope of work and corresponding remuneration.

To summarize, the City has spent $402,102 since 1996 to prepare the Subarea Plan and related Open Space Management Plan. The funding for this project was paid for

with $124,995 of developer-paid mitigation funds, $48,763 from a U.S. Fish and Wildlife Service grant, and $228,344 of City Capital Improvement Program funds.

Foothill Associates is the biological consultant that has prepared this contract addendum to address the increase in scope of services necessary to complete the Subarea Plan based on another round of public and Agency comments during public review of the document in early 2010. The Final Drafts of the Subarea Plan and Open Space Management Plan were forwarded to the U.S. Fish and Wildlife Service and California Department of Fish and Game in December 2009, various environmental groups, and the public for their review. In spring 2010, the City received extensive comments which will require substantial additional analysis, meetings, document revisions, and formulation of a Mitigation Fee Study to assist in Plan implementation. The proposed contract amendment would allow City staff and the Consultant to complete the project. The Subarea Plan is anticipated to play a major role in management and monitoring of sensitive habitats associated with the key open space areas of the City, including the San Luis Rey River Flood Control Project. A summary of the proposed scope of services required to complete the Subarea Plan is attached to this report.

The main benefit of Subarea Plan approval is that the City would be able to self-permit the take or impact to upland habitats such as coastal sage scrub due to public improvement projects and private development. Wetland permitting would be streamlined. If not approved, approval of permits required by the Wildlife Agencies for public and private projects would take 1-2 years longer per project. In addition, the California Department of Fish and Game Permits for the San Luis Rey Flood Control project mowing and maintenance specify that the SAP would be the means for managing and maintaining wetland habitat within the flood control project area.

Staff anticipates having the revised document available for City Council approval in spring/summer 2011. The Subarea Plan would then be forwarded to the Coastal Commission and Wildlife Agencies for final approval.

FISCAL IMPACT

The Multiple Habitat Conservation Program (905117000514) has a current available balance of $100,000. Therefore, sufficient funding is available for Amendment 3.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

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 Amendment 3 in the amount of $95,951 to the professional services agreement with Foothill Associates for additional work to complete the Subarea Plan and present the final to City Council in Spring 2011, and authorize the City Manager to execute the amendment.

PREPARED BY:

Jerry Hittleman
City Planner

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

George Buell, Development Services Director

Teri Ferro, Financial Services Director

ATTACHMENT:

1. Professional Services Agreement
2. Amendment No. 1
3. Amendment No. 2

CITY OF OCEANSIDE
AMENDMENT 3 TO
PROFESSIONAL SERVICES AGREEMENT

PROJECT: SUBAREA PLAN SUPPORT

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment") is made and entered into this 21 day of December, 2011, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and FOOTHILL ASSOCIATES, hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS, CITY and CONSULTANT are the parties to that certain Professional Services Agreement dated April 25, 2007, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein, including drafting a Subarea Plan for presentation to the various state and federal wildlife agencies;

WHEREAS, the CONSULTANT performed substantial work on the original Agreement, and in December 2005, a draft Subarea Plan was forwarded to the various wildlife agencies for comment;

WHEREAS, in November 2007, the CITY received extensive comments from the U.S. Fish and Wildlife Service and the California Department of Fish and Game on the draft Subarea Plan, necessitating substantial additional analysis, meetings, document revisions, and mapping revisions;

WHEREAS, on May 21, 2008, the CITY and the CONSULTANT amended the above agreement to include additional tasks necessary to respond to the voluminous comments received in November 2007, and an increase in total payment of $87,258.

WHEREAS, on May 6, 2009, the CITY and the CONSULTANT amended the above agreement to include additional tasks necessary to finish coordination with the Wildlife Agencies, and an increase in total payment of $79,036.

WHEREAS, the prior funds have been exhausted and there remain additional tasks to complete the Subarea Plan and bring the finished project forward to the City Council for adoption, the parties desire to amend the Agreement to provide for changes and/or modifications to the scope of work and corresponding remuneration.

Subarea Plan Support

AMENDMENT

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

1. The Scope of Work is amended to include those tasks and assumptions delineated on Exhibit "A" attached hereto and made a part hereof.

2. The corresponding total budget to complete the tasks defined in Exhibit "A" shall not exceed $95,951.

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

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 _____, 2010.

FOOTHILL ASSOCIATES

By: _____

Name/title
Kenneth D. Whitney/President

By: _____

Name/Title
Kathleen MC Kirsh/Vice President

68-0402795

Employer ID No.

CITY OF OCEANSIDE

By: _____

Peter Weiss, City Manager

APPROVED AS TO FORM:

_____

City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Placer

On December 21, 2010 before me, Candice Tara Guider, Notary Public,
(Here insert name and title of the officer)

personally appeared Kenneth D. Whitney,

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Candice Guider
Signature of Notary Public

CANDICE TARA GUIDER
COMM. #1729447
NOTARY PUBLIC • CALIFORNIA
PLACER COUNTY
Comm. Exp. MARCH 8, 2011
MGC1 MGC1

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT
City of Oceanside Amendment 3 to professional Services Agreement
(Title or description of attached document)
Project: Subarea Plan Support.
(Title or description of attached document continued)
Number of Pages 2 Document Date 12/21/2011
*Document had incorrect date - 12/21/2011 but today's date is 12/21/10.
(Additional information)

CAPACITY CLAIMED BY THE SIGNER
- ☐ Individual (s)
- ☒ Corporate Officer
  President
  (Title)
- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they,~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
  - Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Placer

On December 21, 2010 before me, Candice Tara Guider, Notary Public
(Here insert name and title of the officer)

personally appeared Kathleen MC Kirsh,

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

CANDICE TARA GUIDER
COMM. #1729447
NOTARY PUBLIC • CALIFORNIA
PLACER COUNTY
Comm. Exp. MARCH 8, 2011
MGC1

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

city of Oceanside Amendment 3 to Professional Services agreement
(Title or description of attached document)

Project: Subarea Plan Support
(Title or description of attached document continued)

Number of Pages 2 Document Date 12/21/2011

* Document had incorrect date 12/21/2011 but today's date is 12/21/10
(Additional information)

CAPACITY CLAIMED BY THE SIGNER

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- ☒ Corporate Officer
  Vice President
  (Title)
- ☐ Partner(s)
- ☐ Attorney-in-Fact
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- Securely attach this document to the signed document

FOOTHILL ASSOCIATES

ENVIRONMENTAL CONSULTING • PLANNING • LANDSCAPE ARCHITECTURE

SCOPE OF WORK – TIME AND MATERIALS Not To Exceed **OCTOBER 1, 2010**

CLIENT:	WITH:
Jerry Hittleman	City of Oceanside- Planning
FROM: Ed Armstrong	PROJECT: Oceanside SAP Addendum

TASK	DESCRIPTION	COST
One:	**Response to Public and Agency Comments** CDFG requires feedback as soon as possible on the questions they submitted regarding the plan, to facilitate their hands-on editing effort. This task includes effort necessary to respond to those questions. One agency meeting is anticipated as part of this task (WLA Meeting #1). WLA Meeting #1 will also include a discussion of the public comments received, and decisions will be made on which comments require document changes and which do not, resulting in a Public Comment Action Plan. Some follow up effort from the consultant team may be necessary to research issues where agreement cannot be reached in the meeting. After reaching consensus on which comments require changes, the project team, managed by Dick Rol and consisting of AECOM, Dudek and Onaka Planning and Economics (OP/E) with oversight from Foothill Associates, will prepare the response to comments. One team meeting (Team Meeting #1) is planned as part of this task in addition to WLA Meeting #1.	$9,645
Two:	**Final Document Edits** The project team will review and address CDFG document edits and make changes identified in the Public Comment Action Plan. It is not possible to anticipate at this point what level of effort will be necessary to complete this task, given that we do not yet know the extent and nature of CDFG edits and have not yet prepared the Action Plan. The budget allocated to this task will be used judiciously to complete as much of the work as possible; however, it may ultimately be inadequate to complete all necessary edits. This task also assumes that no changes will be necessary to the underlying GIS datasets, and no major reanalysis of biological data will be necessary. Meetings that may be necessary for this task are included in Task 3. Provided all outstanding issues can be successfully addressed under the budget available for this task, a final document will be delivered to the City. Ten (10) printed copies of the final document will be provided along with one fully editable electronic copy and one camera-ready electronic copy. No large format map printouts are anticipated to be necessary.	$22,270

590 Menlo Drive, Suite 1 • Rocklin, California 95765 • Telephone (916) 435-1202 • Facsimile (916) 435-1205 • www.foothill.com

Three:	**Meetings and Presentations** One team meeting and one agency meeting are included in previous tasks. This task provides for 1 additional team meeting and 9 additional agency meetings (total 10 meetings). We anticipate this meeting schedule will be sufficient for successful approval of the plan; however, if additional meetings are ultimately required to fully address issues, additional budget will be required. This task also includes preparation for, and attendance at, a final presentation to City Council. A presentation was prepared and practiced for the anticipation of a January 2010 Council workshop; however, that workshop was canceled due to failure to reach a quorum. This task includes minor updates to the content of that presentation, along with delivery of the presentation by Dick Rol to Council. An additional three public presentations to City Commissions, City Council or Coastal Commission are also included. This proposal assumes that these additional presentations will use the same presentation prepared for the City Council workshop and that major revisions or new preparations will not be needed.	**$37,846**
Four:	**Mitigation Fee Study** OP/E will prepare a mitigation fee study report, consistent with the Mitigation Fee Act (Government Code, Sec. 66000ff), for adoption by the City of a Habitat Development Fee, as proposed in the SAP. The report will address the purpose of the fee; the uses to which fee revenues will be put; types of development projects subject to the fee; City actions concerning those projects which trigger imposition of the fee; the relationship between project impact and uses of fee revenues; and the basis for establishing the proportionality of that relationship. The fee study report will be consistent with the SAP, but be prepared independently. Unless otherwise directed by the City, the report will be prepared in time for consideration by the City Council at the same time as approval and adoption of the SAP. OP/E will work closely with the City staff in preparing the report, including preparation of an administrative review draft for review and comment, prior to the final report. AECOM will provide information to OP/E as needed to support the Fee Study.	**$17,292**
Five:	**Project Management** This task addresses project management needs beyond those inherent to one of the previous tasks, including 1) sharing of data and information not covered by other tasks, 2) coordinating meeting dates, schedules, and deliverables, 3) basic accounting and invoicing needs.	**$8,898**
	TOTAL:	**$95,951**

TERMS AND CONDITIONS

This document constitutes an agreement for environmental consulting services to be provided by Whitney Environmental Consulting, Inc., dba Foothill Associates (FOOTHILL) on behalf of City of Oceanside CLIENT).

Services/Expenses:
Services to be provided by FOOTHILL under this agreement are described in the attached scope of work. Consulting Services shall be performed on a not to exceed basis. CLIENT also agrees to pay reimbursable expenses necessary for the performance of the services listed in the attached scope of work. Additional services beyond those outlined in the attached scope of work may be provided if confirmed in writing.

Landscape Architect agrees to provide its professional services in accordance with generally accepted professional standards. Landscape Architect agrees to put forth reasonable efforts to comply with codes, laws, and regulations in effect as of the date of this agreement. Landscape Architects are licensed by the State of California and/or the State of Nevada.

Billings/Payments:
Invoices for FOOTHILL'S services and expenses shall be submitted, at FOOTHILL'S option, either upon completion of such services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. If the invoice is not paid within 30 days, FOOTHILL may, without waiving any claim or right against CLIENT, and without liability whatsoever to CLIENT, terminate the performance of the service.

Late Payments:
Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% (or the legal rate) on the then unpaid balance. In the event any portion or all of an account remains unpaid 90 days after billing, CLIENT shall pay all costs of collection.

Delay, Changes in Scope:
In the event that CLIENT requests a work stoppage of more than 45 days, FOOTHILL reserves the right to renegotiate our fees for the remaining work. Any required services additional to those specifically included herein shall be provided as an extra service on a time and material basis or at an agreed additional fixed fee amount. If the Scope of Work is significantly different from what is described herein, FOOTHILL reserves the right to renegotiate the fee for services based on a revised Scope of Work. Requests for additional consulting services by CLIENT from FOOTHILL beyond the Scope of Work will be billed on a time and materials basis.

Contract Assumptions, Adequacy of Base Data, Project Changes:
FOOTHILL assumes that any base data or engineering drawings provided by CLIENT in support of this Scope of Work are complete, accurate, and are adequate for use by FOOTHILL in completing the work described in this Scope of Work. If this is not the case, FOOTHILL, at CLIENTS expense, or CLIENT, will develop adequate supporting data.

Access to Project Site and Materials:
CLIENT agrees to comply with all requests made by FOOTHILL for information held by CLIENT reasonably necessary for the performance of FOOTHILL'S duties under this Agreement. FOOTHILL will have access to the project site for activities necessary for the performance of the services described in this Agreement. FOOTHILL will take precautions to minimize damage due to these activities, but have not included in the fee the cost of restoration of any resulting damage.

Ownership of Documents:
All instruments of professional services prepared by FOOTHILL including, but not limited to, drawings and specifications are the property of FOOTHILL, and these documents shall not be reused without FOOTHILL's written permission. FOOTHILL retains all rights, including copyright, of its documents. CLIENT or others are not permitted to use FOOTHILL's documents to complete this project unless FOOTHILL is found to have materially breached this agreement. FOOTHILL reserves the right to include representations of the project in its promotional and professional materials.

Dispute Resolution:
Any claims or disputes made during performance of the services between CLIENT and FOOTHILL shall be submitted to non-binding mediation. CLIENT and FOOTHILL agree to include a similar mediation agreement with all contractors, sub contractors, sub consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.

Limitation of Liability:
CLIENT agrees that FOOTHILL'S total liability to CLIENT for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this agreement, from any cause or causes, shall not exceed the amount of services for which invoices have been issued and payments have been received. Such causes include, but are not limited to, FOOTHILL'S negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

Termination of Services:
This agreement may be terminated by CLIENT at any time, upon written notice, prior to the completion of the terms of this agreement. In the event of termination, CLIENT shall pay FOOTHILL for reimbursable expenses and services rendered to the date of termination.

Board of Landscape Architects:
The California or Nevada Board of Landscape Architects regulates Landscape Architects. Any questions concerning a Landscape Architect may be referred to the Board at:

California Board of Landscape Architects
2420 Del Paso Road, Suite 105
Sacramento, CA 95834
Telephone: (916) 757-7230

Nevada Board of Landscape Architects
P.O. Box 17039
Reno, NV 89511
Telephone: (775) 530-4602

This agreement shall be interpreted in accordance with the laws of the State of California.

Offered by:

_____

Ed Armstrong, Principal Date
For Whitney Environmental Consulting, Inc.

Accepted by:

_____

Jerry Hittleman Date
For City of Oceanside

For Landscape Architect Services:
Kathleen M. C. Kirsh
California Landscape Architect License Number: 4362

Meredith M. Branstad
Nevada Landscape Architect License Number: 803

Oceanside SAP Addendum 1 Cost Breakdown

10/1/2010

Task	Foothill	AECOM	Onaka	Dudek	Subtotals
Response to Public and Agency Comments	$300	$4,175	$3,850	$1,320	**$9,645**
Final Document Edits	$0	$19,300	$0	$2,970	**$22,270**
Meetings and Presentations	$0	$22,226	$7,700	$7,920	**$37,846**
Mitigation Fee Study	$0	$682	$15,950	$660	**$17,292**
Project Management	$2,100	$6,138	$0	$660	**$8,898**
Subtotals	**$2,400**	**$52,520**	**$27,500**	**$13,530**	**$95,950**
Total Labor & Expenses	**$95,950**				

OPEN SPACE MANAGEMENT PLAN AND SUBAREA PLAN SUPPORT

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 25th day of April, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Foothill Associates, hereinafter designated as "CONSULTANT".

RECEIVED
JUN 08 2007
Planning Department

RECITALS

A. CITY desires to obtain professional services from an independent contractor for the above named project.

B. CONSULTANT has submitted a proposal to provide planning services for the CITY in accordance with the terms set forth in this Agreement.

C. CITY desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to CITY as an independent contractor.

D. CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education and expertise.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1.0 **SCOPE OF WORK AMENDMENT.** The project is more particularly described as follows:

Task 1. Open Space Management Plan Support and Revisions $13,250
Foothill Associates will revise and finalize the City-wide Open Space Management Plan based on input from the City and the wildlife agencies on the December 2005 version of the plan. The plan will be resubmitted with the Final Subarea Plan following council approval as required to obtain a take permit under the MHCP. Onaka Planning & Economics will develop an overall financing plan for the City-wide program. Foothill Associates will provide technical editing and document production services the Final Subarea Plan document.

the interpretation and enforcement of all work performed in connection with this Agreement. The City Planner may delegate authority in connection with this Agreement to the City Planner's designees. For the purposes of directing the CONSULTANT'S performance in accordance with this Agreement, the City Planner delegates authority to a Senior Planner.

1.1.2 In compliance with Government Code section 7550, the CONSULTANT shall include a separate section in the proposal prepared pursuant to this Agreement, which contains a list of all the subcontractors and dollar amounts of all contracts and subcontracts required for the preparation of work described in this Agreement.

1.1.3 Visit and carefully examine the location of the project as often as necessary to become acquainted with all conditions which are visible or could reasonably be discovered, and which might have an impact upon the construction of the project.

1.1.4 Design, prepare and submit to the City Planner, plans or documents for the project as described in the Scope of Work Amendment, and in the time and manner set forth in this Agreement.

1.2 **SERVICES PROVIDED BY CITY.** The CITY shall perform the following services:

1.2.1 Provide access to and furnish one copy of reports as requested.

1.2.2 Duplicate all final plans and specifications.

1.2.3 Provide overall project management.

2.0 TIMING REQUIREMENTS

2.1 Time is of the essence in the performance of work under this Agreement and the following timing requirements shall be strictly adhered to unless otherwise modified in writing as set forth in Section 2.3. Failure by CONSULTANT to strictly adhere to these timing requirements may result in termination of this Agreement by the CITY and the assessment of damages against the CONSULTANT for delays.

2.2 Phase I. CONSULTANT shall prepare and deliver the project within 1 year of the date of this professional services agreement.

6.0 **LIABILITY INSURANCE.**

7.1 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.

7.2.1 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	$ 2,000,000
Automobile Liability Insurance	$ 1,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

7.2.2 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 purchases 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.

7.3 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

9.0 **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims or lawsuits for damages to persons or property arising out of the conduct, negligent acts, errors, 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, expert fees, attorneys' 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 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.

10.0 **ERRORS AND OMISSIONS.** In the event that the City Planner determines that the CONSULTANT'S negligence, misconduct, errors or omissions in the performance of work under this Agreement has resulted in expense to CITY greater than would have resulted if there were no such negligence, errors or omissions in the plans or contract specifications, CONSULTANT shall reimburse CITY for the additional expenses incurred by the CITY, including planning, construction and/or restoration expense. Nothing herein is intended to limit CITY'S rights under Sections 7, 8 or 9.

11.0 **NO CONFLICT OF INTEREST.** The CONSULTANT shall not be financially interested in any other CITY contract for this project. For the limited purposes of interpreting this section, the CONSULTANT shall be deemed a "City officer or employee", and this Section shall be interpreted in accordance with Government Code section 1090. In the event that the CONSULTANT becomes financially interested in any other CITY contract for this project, that other contract shall be void. The CONSULTANT shall indemnify and hold harmless the CITY, under Section 9 above, for any claims for damages resulting from the CONSULTANT'S violation of this Section.

13.4 CONSULTANT shall submit monthly invoices to CITY. CITY shall make partial payments to CONSULTANT not to exceed the total contract price within thirty (30) days of receipt of invoice, subject to the approval of the City Planner.

14.0 **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement, in accordance with Section 13. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

15.0 **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT'S duties be delegated, without the express written consent of the CITY. Any attempt to assign or delegate this Agreement without the express written consent of the CITY shall be void and of no force or effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

16.0 **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.

17.0 **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.

registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

21.0 **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:

Foothill Associates

By: Don Kersia / VICE PRESIDENT
Name/Title

By: Susan Whitney / Corporate Secretary
Name/Title

68-0402795
Employer ID No.

CITY OF OCEANSIDE

By: Peter Weiss
Peter A. Weiss, Interim City Manager

APPROVED AS TO FORM:

City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

G:\Word Documents\AGREEMENTS\PROFESSIONAL SERVICES AGREEMENTS\Professional Services Agreement Long Form 2003.doc

City Original
Document No. 08-D0323-1
5/21/08 (8)

CITY OF OCEANSIDE
AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT

PROJECT: SUBAREA PLAN SUPPORT

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment") is made and entered into this 21st day of May, 2008, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and FOOTHILL ASSOCIATES, hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS, CITY and CONSULTANT are the parties to that certain Professional Services Agreement dated 4/25/07, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein, including drafting a Subarea Plan for presentation to the various state and federal wildlife agencies;

WHEREAS, the CONSULTANT performed substantial work on the original Agreement, and in December 2005, a draft Subarea Plan was forwarded to the various wildlife agencies for comment;

WHEREAS, in November 2007, the CITY received extensive comments from the U.S. Fish and Wildlife Service and the California Department of Fish and Game on the draft Subarea Plan, necessitating substantial additional analysis, meetings, document revisions, and mapping revisions;

WHEREAS, in order to respond to the comments received, complete the Subarea Plan and bring the finished project forward to the City Council for adoption, the parties desire to amend the Agreement to provide for changes and/or modifications to the scope of work and corresponding remuneration.

AMENDMENT

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

1. The Scope of Work is amended to include those tasks and assumptions delineated on Exhibit "A" attached hereto and made a part hereof.

[Subarea Plan Support]

2. The corresponding total budget to complete the tasks defined in Exhibit "A" shall not exceed $87,258.00.

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

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 7th day of May, 2008.

FOOTHILL ASSOCIATES

By: Susan Whitney / Corporate Secretary / Treasurer
Name/Title

By: President
Name/Title

68-0402795
Employer ID No.

CITY OF OCEANSIDE

By:
Peter Weiss, City Manager

APPROVED AS TO FORM:

, DCA
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Placer

On May 7, 2008 before me, Candice Guider, Notary Public
(Here insert name and title of the officer)

personally appeared Susan Whitney

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Candice Guider
Signature of Notary Public

CANDICE TARA GUIDER
COMM. #1729447
NOTARY PUBLIC • CALIFORNIA
PLACER COUNTY
Comm. Exp. MARCH 8, 2011
MGC-1 MGC-1

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

City of Oceanside Amendment #2
(Title or description of attached document)

Professional Services Agreement
(Title or description of attached document continued)

Number of Pages 11 Document Date May 7, 2008

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☒ Corporate Officer
  Secretary / Treasurer
  (Title)
- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they,~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
  - Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Placer

On May 7, 2008 before me, Candice Guider, Notary Public,
(Here insert name and title of the officer)

personally appeared Kenneth D. Whitney,

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

CANDICE TARA GUIDER
COMM. #1729447
NOTARY PUBLIC • CALIFORNIA
PLACER COUNTY
Comm. Exp. MARCH 8, 2011
MGC1

WITNESS my hand and official seal.

Candice Guider
Signature of Notary Public

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

City of Oceanside Amendment #2
(Title or description of attached document)

Professional Services Agreement
(Title or description of attached document continued)

Number of Pages 11 Document Date May 7, 2008

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☒ Corporate Officer president.
  (Title)
- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they,~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
  - Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

City Original
Document No. 09-D0279-1
5/6/09 (11)

CITY OF OCEANSIDE
AMENDMENT 2 TO
PROFESSIONAL SERVICES AGREEMENT

PROJECT: SUBAREA PLAN SUPPORT

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment") is made and entered into this 6th day of May, 2009, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and FOOTHILL ASSOCIATES, hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS, CITY and CONSULTANT are the parties to that certain Professional Services Agreement dated April 25, 2007, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein, including drafting a Subarea Plan for presentation to the various state and federal wildlife agencies;

WHEREAS, the CONSULTANT performed substantial work on the original Agreement, and in December 2005, a draft Subarea Plan was forwarded to the various wildlife agencies for comment;

WHEREAS, in November 2007, the CITY received extensive comments from the U.S. Fish and Wildlife Service and the California Department of Fish and Game on the draft Subarea Plan, necessitating substantial additional analysis, meetings, document revisions, and mapping revisions;

WHEREAS, on May 21, 2008, the CITY and the CONSULTANT amended the above agreement to include additional tasks necessary to respond to the voluminous comments received in November 2007, and an increase in total payment of $87,258.

WHEREAS, the prior funds have been exhausted and there remain additional tasks to complete the Subarea Plan and bring the finished project forward to the City Council for adoption, the parties desire to amend the Agreement to provide for changes and/or modifications to the scope of work and corresponding remuneration.

AMENDMENT

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

[Subarea Plan Support]

1. The Scope of Work is amended to include those tasks and assumptions delineated on Exhibit "A" attached hereto and made a part hereof.

2. The corresponding total budget to complete the tasks defined in Exhibit "A" shall not exceed $79,036.00.

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

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 23rd day of April, 2009.

FOOTHILL ASSOCIATES

By: V.P.
Name/title

By: President
Name/Title

68-0402796
Employer ID No.

CITY OF OCEANSIDE

By:
Peter Weiss, City Manager

APPROVED AS TO FORM:

, DCA
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

ACKNOWLEDGMENT

State of California
County of Placer)

On April 23, 2009 before me, Candice Guider, Notary Public
(insert name and title of the officer)

personally appeared Kathleen M.C. Kirsh,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

CANDICE TARA GUIDER
COMM. #1729447
NOTARY PUBLIC • CALIFORNIA
PLACER COUNTY
Comm. Exp. MARCH 8, 2011

Signature Candice Guider (Seal)

ACKNOWLEDGMENT

State of California
County of Placer)

On April 23, 2009 before me, Candice Guider, Notary Public
(insert name and title of the officer)

personally appeared Kenneth D. Whitney,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

CANDICE TARA GUIDER
COMM. #1729447
NOTARY PUBLIC • CALIFORNIA
PLACER COUNTY
Comm. Exp. MARCH 8, 2011
MGC1

WITNESS my hand and official seal.

Signature Candice Guider (Seal)