

STAFF REPORT



ITEM NO. **10**

CITY OF OCEANSIDE

DATE: October 11, 2006

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH HARRIS AND ASSOCIATES IN THE AMOUNT OF \$1,887,422 FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE PACIFIC STREET BRIDGE ACROSS THE SAN LUIS REY RIVER**

SYNOPSIS

Staff recommends that the City Council approve a professional services agreement with Harris and Associates of San Diego in the amount of \$1,887,422 for construction management services for the Pacific Street Bridge across the San Luis Rey River and authorize the City Manager to execute the agreement.

BACKGROUND

The proposed Pacific Street Bridge, which links Downtown to the Harbor, is an integral part of the City's circulation element and is necessary for improved emergency access. The current Pacific Street crossing, designed by the Army Corps of Engineers, washes out during periods of significant rainfall. The crossing last washed out in January 2005.

The proposed Pacific Street Bridge project will include a 600-foot-long, 4-span, cast-in-place, prestressed-concrete box girder bridge, supported on three drilled piers and abutments. The bridge provides a traffic lane, bike path and sidewalk in each direction. Harbor Drive South and Pacific Street will be realigned vertically to meet the bridge approaches. After the new Pacific Street Bridge is opened, the existing low-water crossing will be removed. As a mitigation measure, a coastal wetlands will be recreated upstream on the north side of the San Luis Rey River east of I-5.

On August 2, 2006, the City Council awarded the construction contract to FCI Constructors, Inc., of Vista, for \$18,062,415. The City solicited proposals from more than 20 firms for construction management services.

ANALYSIS

Six proposals were received and evaluated. Staff conducted interviews with the top four firms, selected Harris and Associates as the most qualified firm and commenced negotiations. Caltrans' Audits Division then opened an extensive review of Harris and Associates internal accounting controls, which was completed on August 30, 2006.

This professional services agreement for construction management includes construction surveys, materials testing, biological monitoring and construction administration. Harris and Associates was selected based on the Caltrans-required selection criteria, including public advertisement and a structured selection checklist. Harris and Associates also provided the lowest cost proposal for the requested scope of services.

FISCAL IMPACT

Project construction costs, including the construction management costs under this professional services agreement, are 88.53 percent reimbursable from a Federal Highway Administration grant.

The FY 2006-07 Capital Improvement Program (CIP) budget includes an appropriation of \$500,000 this year plus a carry forward of \$2.19 million for a total of \$2.69 million. An additional \$5 million is allocated in the FY 2007-08 CIP budget and an additional \$5.5 million is allocated in the FY 2008-09 CIP budget. As funds are expended, the Federal government will reimburse 88.53 percent of the construction costs up to \$17.98 million. In each fiscal year, if costs exceed the budgeted amount, or if reimbursement is received in excess of the anticipated amount, staff will return with a budget item for the revised amounts.

The Water Utilities Department has budgeted \$300,000 in the Water Connection Fees fund for the inclusion of a new water transmission line through the bridge; this portion is not reimbursable.

INSURANCE REQUIREMENTS

The City's standard insurance requirements are 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 professional services agreement with Harris and Associates of San Diego in the amount of \$1,887,422 for construction management services for the Pacific Street Bridge across the San Luis Rey River and authorize the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:



Gary Kellison
Senior Civil Engineer



Barry E. Martin
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant to the City Manager

Peter A. Weiss, Public Works Director

Nita McKay, Financial Services Director





CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: Pacific Street Bridge Construction Management: (501.737556)

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 Harris & Associates, a California corporation, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows:
Provide construction management services for the construction survey, materials testing, biological monitoring and construction administration services, as detailed in the scope of services in Exhibit A.
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.

The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the City's Contract Manager, except that which is expressly identified in the CONSULTANT'S Cost Proposal. Any subcontract in excess of \$25,000, entered into as a result of this contract, shall contain all the provisions stipulated in this contract to be applicable to Sub consultants. Any substitution of Sub consultants must be approved in writing by the City's Contract Manager in advance of assigning work to a substitute Sub consultant.

The City reserves the right to terminate this contract immediately in the event of breach or failure of performance by the CONSULTANT, or upon thirty (30) calendar day written notice to the CONSULTANT if terminated for the convenience

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of the City. The City may terminate this Agreement and be relieved of any payments except as provided for under early termination should the CONSULTANT fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the City may proceed with the work in any manner deemed proper by the City. All costs to the City shall be deducted from any sum due the CONSULTANT under this agreement and the balance, if any, shall be paid to the CONSULTANT upon demand. In the event the contract is terminated for the convenience of the City, the CONSULTANT shall be paid for the percentage of the work completed, relative to the total work effort called for under this contract, and for termination costs. Within 30 days of the date the CONSULTANT is notified of early termination for the convenience of the City, the CONSULTANT shall prepare and submit to the Contract Manager, for approval, two (2) separate supplemental cost proposals:

1. a final revised cost proposal for all project-related costs to the revised termination date, and
2. a cost proposal specifically addressing the termination settlement costs only.

The CONSULTANT reserves the right to terminate this contract upon thirty (30) calendar day written notice to the City. In the event of such termination, the City may proceed with the work in any manner deemed proper by the City. In the event the contract is terminated for the convenience of the CONSULTANT, the CONSULTANT shall be paid for the work completed under this contract. Within 30 days of the date the City is notified of early termination for the convenience of the CONSULTANT, the CONSULTANT shall prepare and submit to the Contract Manager, for approval, two (2) separate supplemental cost proposals:

1. a final revised cost proposal for all project-related costs to the revised termination date, and
2. a cost proposal specifically addressing the termination settlement costs only.

Settlement costs may include such items as subcontract settlement costs, costs required to terminate the services including preparation of any documentation, and other unavoidable costs. Administrative costs may also be recovered. Costs for staff, equipment or supplies that can be effectively utilized by the firm on other projects should not be included.

3. **WORKER'S 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 Worker's 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.

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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 coverage provided to the City as additional insured shall be primary insurance and

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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 negligent

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conduct, negligent acts, errors or omissions or wrongful acts of conduct of the CONSULTANT, or its employees, agents, subcontractors, or others to the extent caused by negligent execution of 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.

In the event the CONSULTANT or the CITY, its officers, agents, or employees must defend against a claim or lawsuit, or threat of a claim or lawsuit, the CITY agrees to budget an amount not to exceed \$100,000 to compensate the CONSULTANT in part for costs, expenses, attorney's fees, expert fees and liability assessed against the CONSULTANT in defending such claims or lawsuits. The CONSULTANT shall not perform, nor be compensated, for work associated with this task without the prior written authorization of the CITY. The CITY shall not withhold authorization, in the event any claim is brought against the CONSULTANT or its insurance resulting from work performed on the Project.

7. **COMPENSATION.** The CONSULTANT shall be paid the specified hourly rate for each class of employee engaged directly in the work in accordance with Exhibit A which includes the CONSULTANT'S direct labor costs, fringe benefits, overhead, general and administration costs, and net fees. Other direct costs will be reimbursed as actual cost items in accordance with Exhibit A. CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$1,887,422.

The contract amount of \$1,887,422 is a budget estimate and may need to be supplemented from time to time by written amendment to this agreement in order for the CONSULTANT to perform the work contemplated under this agreement.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the City Engineer. CONSULTANT shall obtain approval by the City Engineer prior to performing any work, which results in incidental expenses to CITY.

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Prior authorization in writing by the Contract Manager shall be required before the CONSULTANT enters into any non-budgeted purchase order or subcontract exceeding \$500 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs. For purchase of any item, service or consulting work not covered in the CONSULTANT'S Cost Proposal and exceeding \$500, with prior authorization by the Contract Manager, three (3) competitive quotations must be submitted with the request or the absence of bidding must be adequately justified. The CONSULTANT shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this contract. The inventory record of each piece of such equipment shall include the date and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one (1) year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 shall be inventoried. A copy of the inventory record must be submitted to the City upon request. At the conclusion of the contract or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the City in an amount equal to its fair market value or sell such equipment at the best price obtainable, at a public or private sale, in accordance with established City procedures, and credit the City in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined, at the CONSULTANT'S expense, on the basis of a competent, independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to the City and CONSULTANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the City. CFR 49, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000, is credited to the project. Any subcontract entered into as a result of this contract, shall contain all the provisions of this Exhibit.

Reimbursement for transportation and subsistence costs shall not exceed the rates to be paid non-represented/excluded State employees under current State Department of Personnel Administration rules.

The CONSULTANT agrees that the Contract Cost Principles and Procedures contained in 48 CFR Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., shall be used to determine the allowability of individual items of cost. The CONSULTANT also agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any Costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be

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unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq. or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by the CONSULTANT to the State. Any subcontract in excess of \$25,000, entered into as a result of this contract, shall contain all the provisions of this Exhibit.

8. **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 Engineer within 607 working days. Pre-construction shall take place in 62 working days beginning in September, 2006; Construction management shall take place in 525 working days; Post-construction shall take place in 20 working days ending in January, 2009. Since the period of work is contingent on the Construction Contractor's schedule, these timing requirements may be modified from time to time by written amendment to this Agreement.

9. **RETENTION OF RECORDS/AUDIT CLAUSE.** For the purpose of determining compliance with Public Contract Code Section 10115, et. seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et. seq., when applicable, and other matters connected with the performance of the contract pursuant to Government Code Section 8546.7, the CONSULTANT, Sub consultants, and the City shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract. The State, State Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

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.

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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.

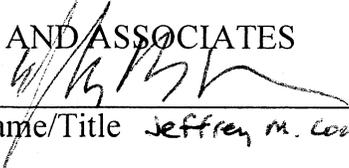
Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

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. **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.

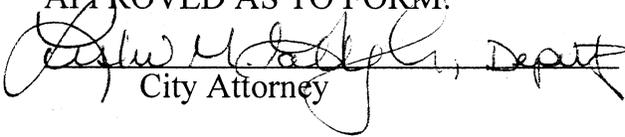
HARRIS AND ASSOCIATES

CITY OF OCEANSIDE

By: 
Name/Title Jeffrey M. Cooper, SR. Vice Pres.

By: _____
Barry Martin, City Manager

By: _____
Name/Title
94-2385238
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 Orange

} ss.

On Sept. 21, 2006 before me, Nancy Irene Arroyo Notary Public

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jeffrey M. Cooper

Name(s) of Signer(s)

- personally known to me
- 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

Nancy Irene Arroyo
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: Professional Services Agreement

Document Date: Sept. 21, 2006 Number of Pages: 8

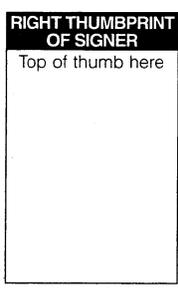
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing: _____



Signer's Name: _____

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

Signer Is Representing: _____

