ITEM NO. 10

STAFF REPORT

CITY OF OCEANSIDE

DATE: October 14, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH NICOLOFF AND ASSOCIATES AND A BUDGET APPROPRIATION FROM A TRUST ACCOUNT SET UP FOR THE VETERANS ADMINISTRATION OF NORTH COUNTY (VANC) FOR ADDITIONAL WORK IN THE REMODEL OF 1617 MISSION AVENUE**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 in the amount of $51,224 to the professional services agreement with Nicoloff and Associates for construction administration services during the remodel of 1617 Mission Avenue for additional design and construction changes; authorize the City Manager to execute the Amendment; and approve a budget appropriation in the amount of $25,381 from a trust account that was set up for the Veterans Administration of North County (VANC) to the design and construction accounts for the project to fund the additional work.

BACKGROUND

On August 3, 2005, the City Council approved a professional services agreement with Nicoloff and Associates Inc., of San Diego in the amount of $135,183 for the design work of the Emergency Operations Center. Shortly after, the contract with Nicoloff was put on hold due to use changes for the building; Nicoloff later resumed the design work for jail cell demolition and the retrofit of the building.

On April 11, 2007, the City Council accepted the demolition work removing the concrete jail cells formerly attached to the building at 1617 Mission Avenue. The project also removed some dilapidated shed structures and added a new exterior framed wall where the jail cells had once stood.

On April 16, 2008, the City Council approved a property lease agreement with the Veterans Association of North County to use the building at 1617 Mission Avenue for programs and activities benefitting the community of veterans. In its present condition, the building shell cannot be used because it does not meet current seismic and other structural code requirements that have evolved since the structure was built in 1968.

On June 11, 2008, the City Council approved the plans and specifications for the remodel work and authorized a call for bids. Notices inviting sealed bids were advertised in local newspapers, on the City's Web site, and trade journals in accordance with the City's standard bidding procedures.

On January 14, 2009, the City Council awarded a contract in the amount of $749,000 to Avi-Con, Inc., dba CA Construction of Riverside for the 1617 Mission Avenue Remodel project and authorized the City Manager to execute a Professional Services Agreement in the amount of $149,800 with Dudek, Incorporated, of Encinitas for construction management services for the project.

VANC remitted $25,381 to the City, which was deposited into a trust account. During construction, VANC requested additional design and construction changes to the remodel work. The changes would allow for a more efficient transition for VANC when they begin their tenant improvements and occupy the building. Staff determined that these changes would be beneficial and arranged an agreement for VANC to pay for the changes.

ANALYSIS

Of the $25,381 deposited by VANC, $12,961 is for design costs associated with the construction changes and $12,420 is for the construction costs themselves. The changes requested by VANC include the redesign of two alcoves adding additional square footage to the floor space, removing a portion of a concrete masonry wall, adding openings to another wall, and adding a door.

City-requested design changes total $38,263 and cover construction administration services, revision of a telephone room, relocation of roof drains, relocation of a door making it ADA-compliant, redesign of an alcove, and redesign of a door opening.

These City-requested changes implement basic improvements that are the City's obligation as landlord under the lease agreement. The $12,961 in VANC-requested design changes benefit VANC's tenant use. Together, the City's and VANC's design changes equal the $51,224 cost of the professional services Amendment with Nicoloff.

FISCAL IMPACT

The $25,381 will be appropriated from the VANC Trust Account (503.2090.0061) of which $12,240 will be transferred to 907749300503.5325 for construction costs. The balance of $12,961 will be transferred to 907522000503.5305 for the design services and is included in the request for Amendment 1 in the amount of $51,224. The remaining amount of $38,263 is available in 907522000503 which has a FY 2008-09 carry forward balance of $79,682. Therefore sufficient funds are available for Amendment 1.

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 1 in the amount of $51,224 to the professional services agreement with Nicoloff and Associates for construction administration services during the remodel of 1617 Mission Avenue for additional design and construction changes; authorize the City Manager to execute the Amendment; and approve a budget appropriation in the amount of $25,381 from a trust account that was set up for the Veterans Administration of North County (VANC) to the design and construction accounts for the project to fund the additional work.

PREPARED BY:

Ed Vasquez
Project Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

George Buell, Development Services Director

Scott O. Smith, City Engineer

Teri Ferro, Financial Services Director

Attachments:

Amendment 1
Professional Services Agreement dated June 20, 2005

CITY OF OCEANSIDE
AMENDMENT 1 TO
PROFESSIONAL SERVICES AGREEMENT

PROJECT: ARCHITECTURAL AND ENGINEERING DESIGN SERVICES TO THE BUILDING AT 1617 MISSION AVENUE - 907522000503.5305

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment"), dated _____ 2009, for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and NICOLOFF AND ASSOCIATES, INC., hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement dated June 20, 2005, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein;

WHEREAS, the parties desire to amend the Agreement to provide for changes and/or modifications to the Scope of Work and Compensation of the agreement.

AMENDMENT

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

1. **SCOPE OF WORK.** The scope of work is hereby amended to include the following additional work: Provide additional design, architectural, structural, mechanical and electrical services for the following changes requested by The Veterans Administration of North County (VANC) and The City of Oceanside. Provide construction administration services including but not limited to bi-weekly onsite meetings, submittal reviews, change order reviews, Request for Information (RFI) reviews, preparation of Architect's Supplemental Instructions (ASI), and preparation of plans and submittals that need to change the current set of approved plans through the Building Department.

VANC Changes:

a) Change framing at two alcoves on GL-1
b) Remove portion of CMU structure per sketch
c) Add opening in shear wall at GL-2
d) Add 3X7 Man door GL-1

City of Oceanside Changes:

a) Telephone room, revise demo and new floor plan
b) Remove roof drains
c) Relocate door 111E for ADA access
d) Change framing at one alcove on GL-B
e) Opening in shear wall GL-3
f) Provide additional

2. **COMPENSATION** is hereby amended by adding an amount not to exceed $51,224.

The total amount for the work required by the Professional Services Agreement (PSA), including this amendment, shall not exceed $183,126.

VANC Changes:	$12,961
City of Oceanside Changes:	$38,263
Amendment 1 Total:	$51,224
Current PSA Total:	$131,902
Total PSA, including Amendment 1:	$183,126

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.

ARCHITECTURAL AND ENGINEERING DESIGN SERVICES TO THE BUILDING AT 1617 MISSION AVENUE - 907522000503.5305

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 on the dates set forth below.

NICOLOFF ENGINEERING, INC.

By: JAMES NICOLOFF
Name/Title

Date: 09/23/09

By: _____
Name/Title

Date: _____

_____
Employer ID No.

CITY OF OCEANSIDE

By: _____
Peter Weiss, City Manager

Date: _____

APPROVED AS TO FORM:

Barbara Hamilton, ASST.
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

09.23.09
SEE ATTACHMENT FOR NOTARIZATION

N:\Engineering\Engineering\ADMIN\Admin Docs - Specs and Staff Reports\Engineering Staff Reports-Current\10-14-09 1617 Mission Ave PSA Amendment 4 - Nicoloff 7-20-09.doc

(Revised 11-2008)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego

On 09.23.09 (Date) before me, Christina M. Bazzo, Notary Public (Here Insert Name and Title of the Officer),

personally appeared James M. Nicoloff (Name(s) of Signer(s)),

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 Christina M. Bazzo (Signature of Notary Public)

OFFICIAL SEAL
CHRISTINA M. BAZZO
NOTARY PUBLIC-CALIFORNIA
COMM. NO. 1631372
SAN DIEGO COUNTY
MY COMM. EXP. DEC. 19, 2009

Place Notary Seal Above

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: Amendment 1 to Professional SVS Agreement

Document Date: 09.23-09 Number of Pages: 3

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: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
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Job 907749300503 1617 Mssn Ave Remodel From Date 7/1/2009 Thru Date 9/30/2009

Project 837493 CIP MB-1617 Mssn Ave Remodel

Job	Cost Code	Cost Type	Description	L P M DECUM	Budget Amount	Actual Amount	Open Commit Amount	Available Budget Amt
907749300503		4000	Revenues	3 ND				
907749300503		4180	Parking Revenue	4 ND				
907749300503		4180	Parking Revenue	4 T				
907749300503		4195	Fines , Fortitures & Penalties	4 ND				
907749300503		4195	Fines , Fortitures & Penalties	4 T				
907749300503		4215	Use of Money & Property	4 ND				
907749300503		4215	Use of Money & Property	4 T				
907749300503		4367	Intergovernmental	4 ND				
907749300503		4367	Intergovernmental	4 T				
907749300503		4380	Other Revenue	4 ND				
907749300503		4380	Other Revenue	4 T				
907749300503		4410	Current Services	4 ND				
907749300503		4410	Current Services	4 T				
907749300503		4000	Revenues	3 T				
907749300503		5000	Expenditures	3 ND				
907749300503		5100	Personnel Services	4 ND				
907749300503		5100	Personnel Services	4 T		3,427.70		3,427.70-
907749300503		5200	Prsnnl Svc - Employee Benefits	4 ND				
907749300503		5200	Prsnnl Svc - Employee Benefits	4 T		1,269.74		1,269.74-
907749300503		5300	Maintenance & Operations	4 ND				
907749300503		5300	Maintenance & Operations	4 T	749,908.00	89,818.85	696,519.84	36,430.69-
907749300503		5415	Internal Service Charges	4 ND				
907749300503		5415	Internal Service Charges	4 T		5,608.00		5,608.00-
907749300503		5420	Debt Service	4 ND				
907749300503		5420	Debt Service	4 T				
907749300503		5430	Other M&O	4 ND				
907749300503		5430	Other M&O	4 T				
907749300503		5700	Capital Outlay	4 ND				
907749300503		5700	Capital Outlay	4 T	222,103.00			222,103.00
907749300503		6000	Below the Line Items	4 ND				
907749300503		6000	Below the Line Items	4 T				
907749300503		5000	Expenditures	3 T	972,011.00	100,124.29	696,519.84	175,366.87
907749300503			1617 Mssn Ave Remodel	2 T	972,011.00	100,124.29	696,519.84	175,366.87
			Total:	1 T	972,011.00	100,124.29	696,519.84	175,366.87

Job 907522000503 Mission Ave Fuel Site From Date 7/1/2009 Thru Date 9/30/2009

Project 835220 CIP MB-Mission Ave Fuel Site

Job	Cost Code	Cost Type	Description	L P M D E C UM	Budget Amount	Actual Amount	Open Commit Amount	Available Budget Amt
907522000503		4000	Revenues	3 ND				
907522000503		4180	Parking Revenue	4 ND				
907522000503		4180	Parking Revenue	4 T				
907522000503		4195	Fines , Fortitures & Penalties	4 ND				
907522000503		4195	Fines , Fortitures & Penalties	4 T				
907522000503		4215	Use of Money & Property	4 ND				
907522000503		4215	Use of Money & Property	4 T				
907522000503		4367	Intergovernmental	4 ND				
907522000503		4367	Intergovernmental	4 T				
907522000503		4380	Other Revenue	4 ND				
907522000503		4380	Other Revenue	4 T				
907522000503		4410	Current Services	4 ND				
907522000503		4410	Current Services	4 T				
907522000503		4000	Revenues	3 T				
907522000503		5000	Expenditures	3 ND				
907522000503		5100	Personnel Services	4 ND				
907522000503		5100	Personnel Services	4 T				
907522000503		5200	Prsnnl Svc - Employee Benefits	4 ND				
907522000503		5200	Prsnnl Svc - Employee Benefits	4 T				
907522000503		5300	Maintenance & Operations	4 ND				
907522000503		5300	Maintenance & Operations	4 T	11,991.00	11,990.66		.34
907522000503		5415	Internal Service Charges	4 ND				
907522000503		5415	Internal Service Charges	4 T		522.00		522.00-
907522000503		5420	Debt Service	4 ND				
907522000503		5420	Debt Service	4 T				
907522000503		5430	Other M&O	4 ND				
907522000503		5430	Other M&O	4 T				
907522000503		5700	Capital Outlay	4 ND				
907522000503		5700	Capital Outlay	4 T	79,682.00			79,682.00
907522000503		6000	Below the Line Items	4 ND				
907522000503		6000	Below the Line Items	4 T				
907522000503		5000	Expenditures	3 T	91,673.00	12,512.66		79,160.34
907522000503			Mission Ave Fuel Site	2 T	91,673.00	12,512.66		79,160.34
			Total:	1 T	91,673.00	12,512.66		79,160.34

EOC Tenant Improvements at 1617 Mission Avenue

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 20th day of June 2005, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Nicoloff and Associates, Inc., hereinafter designated as "CONSULTANT".

RECITALS

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

B. CONSULTANT has submitted a proposal to provide engineering 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.** The project is more particularly described as follows: Provide architectural and engineering design services to bring the building at 1617 Mission Avenue into compliance with current building codes to allow use of the structure as an Emergency Operations Center (EOC). The EOC shall consist of 2,000 square feet of open floor space inside the existing building. During a natural disaster or other civil emergency, the EOC would be staffed 24 hours a day by up to 22 people. Only the portion of the building needed for the EOC will have an interior finish for occupancy. However, project includes all code-required improvements to the overall building that are necessary for the building's initial use as an EOC and the future use of the building's remaining floor area.

The building's electrical, HVAC, and structure must be repaired or replaced so that the entire building can be developed to its ultimate use, which in addition to the EOC, includes a backup dispatch center and office space for the City's code enforcement officers. The required electrical work included replacement of the

building's electrical service panel, all interior wiring for the EOC use and pre-wiring for future uses, and a new back-up electrical generator for the EOC. The existing roof-mounted HVAC must be replaced, and the duct and fire safety deficiencies in the ceiling space must be corrected. The work on the building structure includes demolition of the former jail cells, modifying masonry walls, and strengthening the wood framing in the roof. In accordance with the Americans With Disabilities Act, the building will be made fully access for interior EOC use and accessible from the outside for all other future uses as well.

1.1 **PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.** The professional services to be performed by CONSULTANT shall consist of but not be limited to the following:

1.1.1 Work closely with the City Engineer in performing work in accordance with this Agreement in order to receive clarification as to the result that the CITY expects to be accomplished by CONSULTANT. The City Engineer, under the authority of the City Manager, shall be the CITY'S authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The City Engineer may delegate authority in connection with this Agreement to the City Engineer's designees. For the purposes of directing the CONSULTANT'S performance in accordance with this Agreement, the City Engineer delegates authority to the Senior Civil Engineer assigned as project manager to the EOC project.

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 Engineer, plans and specifications for the construction of the project as described below, and in the time and manner set forth in this Agreement.

a. Site improvement plans including site layout, available parking and parking stall locations, utilities service connections, vapor extraction wells, gates, accessory structure, and surface improvements at the jail cells.

b. Demolition plan for the jail cells and portions of the building interior
c. Structural masonry plans for the repairing existing walls and closing the jail cell space
d. Structural framing plans showing all timber connectors and other improvements required for the building's use as "essential facility"
e. Electrical plans for new building service panel, interior wiring, switches, receptacles, and back-up generator
f. Wiring plan for telephone service and communications for the EOC occupancy
g. Mechanical plans for new HVAC units, ducts, and control system.
h. Fire safety plans including sprinklers, fire alarm, and exit signs
i. Plumbing plans including toilet and sink fixtures for the EOC occupancy
j. Lighting and drop ceiling improvement plan for the EOC occupancy
k. Painting and wall finish repair plans for the EOC occupancy

1.1.5 Prepare and submit to the City Engineer, concurrently with the design plans, the following:

a. A written estimate of probable construction costs.
b. A written list of submittals, which the construction contractor will be required to provide during the construction phase of the project.
c. A space planning study to demonstrate how the building's interior may be arranged to accommodate a permanent EOC, a backup dispatch center and office space for fifteen code enforcement officers and support staff. The space planning study will be done concurrently with the preparation of the 90% design plans.

1.1.6 Upon completion of construction, prepare, approve and sign a set of As-Built record drawings.

1.1.7 Provide office and field assistance to the City during the bidding and construction periods upon request by City Engineer to include the services listed below:

a. Provide consultation and advice to the City during construction of the project.

b. Review and comment on detailed construction drawings, shop and erection drawings submitted by the contractor, subcontractors and suppliers for compliance with the construction contract documents.

c. Review and comment on laboratory material test reports.

d. On request, review and make recommendations on construction contract change orders and requests for information from the contractor.

f. Prepare design changes and clarifications to the plans and specifications.

h. Provide periodic visits to the site to monitor construction.

i. Attend meetings with the City Engineer or his designees.

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

1.2.1 Provide access to all public improvement plans and records and furnish one copy of drawings and reports requested.

1.2.2 Obtain a building permit and all other necessary permits from other regulatory agencies and other Departments. CONSULTANT shall participate in the completion of such forms but the CITY will submit these and pay for any fees.

1.2.3 Provide sample of title block for the plans and CITY Engineering standards.

1.2.4 Upon request, verify the location of existing CITY-owned utilities.

1.2.5 Provide all legal advertising mailings and postings required.

1.2.6 Duplicate all plans and specifications, except those copies provided by the CONSULTANT to the CITY for review.

1.2.7 Provide all necessary surveying and testing required for design, including geotechnical engineering services if required during construction.

1.2.8 Provide overall project management.

1.2.9 Provide coordination of all inquiries from prospective bidders during the bidding period.

1.2.5 Incorporate the architectural, structural, mechanical, electrical, and fire sprinkler specifications into the standard-form Public Works Construction Contract Documents to produce the project's bid documents.

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 2.6. 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 a copy of the 40% preliminary design plans to the City Engineer within 75 calendar days of the execution of this Agreement. No work shall be performed by CONSULTANT beyond the Phase I stage until the City Engineer has given written approval of the preliminary design and authorization to perform Phase II.

2.3 Phase II. CONSULTANT shall prepare and deliver a copy of the 90% design plans to the City Engineer within 75 calendar days of the execution of this Agreement. No work shall be performed by CONSULTANT beyond the Phase II stage until the City Engineer has given authorization to perform Phase III.

2.4 Phase III. CONSULTANT shall prepare and deliver the final design plans to the City Engineer within 30 calendar days of the City Engineer's written authorization to perform Phase III.

2.5 Phase IV. CONSULTANT shall prepare and deliver the final As-Built plans for record drawings to the City Engineer within 60 calendar days of the City engineer's written request.

2.6 CONSULTANT shall submit all requests for extensions of time for performance in writing to the City engineer no later than ten (10) calendar days after the start of the condition that purportedly caused the delay, and not later than the date on which performance is due. The City Engineer shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond CONSULTANT'S control.

2.7 For all time periods not specifically set forth herein, the CONSULTANT shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, fax, hand delivery or mail.

3.0 **DESIGN CRITERIA AND STANDARDS.** All work shall be performed in accordance with applicable CITY, state and federal codes and criteria. In the

performance of its professional services, CONSULTANT shall use the degree of care and skill ordinarily exercised by CONSULTANT under similar conditions.

All plans shall be ink drawn on standard mylar sheets available from the CITY at no cost to CONSULTANT. Contract specifications shall conform to the CITY'S specification procedures and the format of the CITY'S standard form Contract Documents for Public Works Construction.

4.0 **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 sole 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.

5.0 **CITY BUSINESS LICENSE.** Prior to the commencement of any work under this agreement, the CONSULTANT shall obtain and present a copy of an Oceanside City Business License to the City Engineer.

6.0 **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 these Award Documents. The certification shall be in accordance with Subsections 7.3 through 7.8 of this Agreement.

7.0 **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 Agreement. Insurance coverage provided to the CITY as an additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

7.4 All insurance companies affording coverage to the CONSULTANT pursuant to this Agreement shall be insurance organizations authorized 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.

7.5 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.

7.6 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

7.7 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.

7.8 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.

8.0 **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).

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

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 Engineer 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 engineering, 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.

12.0 **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and other documents, prepared or provided by the CONSULTANT under this Agreement shall be the property of the CITY. The CITY agrees to hold the CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the plans and specifications and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computation and other documents, prepared or provided by the CONSULTANT. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting their participation in this project.

13.0 **COMPENSATION.**

13.1 For work performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT in accordance with the schedule of billing rates set forth in Exhibit "A", attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this Agreement without prior written approval of the City Engineer. CONSULTANT'S compensation for all work performed in accordance with this Agreement shall not exceed the total contract price of $135,183.

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 as set forth in Section 13.2.2.

13.2 CONSULTANT shall maintain accounting records including the following information:

13.2.1 Names and titles of employees or agents, types of work performed and times and dates of all work performed in connection with this Agreement which is billed on an hourly basis.

13.2.2 All incidental expenses including reproductions, computer printing, postage, mileage and subsistence.

13.3 CONSULTANT'S accounting records shall be made available to the City Engineer for verification of billings, within a reasonable time of the City Engineer's request for inspection.

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 engineer, and based upon the following partial payment schedule:

13.4.1 Prior to submittal of the 40% preliminary design plans, partial payments shall not exceed $ 50,477.

13.4.2 Prior to CITY approval of the plans and specifications, partial payments shall not exceed $ 112,470.

13.4.3 Final payment shall be made to CONSULTANT upon CONSULTANT's

preparation of As-Built plans for record drawings to the satisfaction of the City Engineer.

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.

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.

18.0 **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.

19.0 **CLAIMS.** No suit shall be brought on this contract unless all statutory claims filing requirements have been met.

20. **NOTICES.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

TO CITY:	**TO CONSULTANT:**
City of Oceanside City Engineer 300 North Coast Highway Oceanside, CA 92054	Nicoloff and Associates, Inc. James M. Nicoloff, President 3405 Kenyon Street, Suite 511 San Diego, CA 92110

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or

b. Three (3) working days following the deposit in the United States mail of 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:

NICOLOFF AND ASSOCIATES

By: PRESIDENT
Name/Title

By: SECRETARY
Name/Title

330437156
Employer ID No.

CITY OF OCEANSIDE

By:_____
Steven R. Jepsen, City Manager

APPROVED AS TO FORM:

DEPUTY
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

G:\Word Documents\AGREEMENTS\PROFESSIONAL SERVICES AGREEMENTS\Professional Services Agreement Long Form 2004.doc

Fee Spread Sheet
Oceanside Emergency Operations Center Tenant Improvement

Attachment "A"

Estimated Construction Cost: 17,655 SF x $72/SF = $1,271,160

Discipline Firm	Schematic Design	Design Development	Construction Documents	Bid Phase	Construction Observation	Total
Architecture Nicoloff	$10,901	$14,535	$32,704	$3,634	$10,901	**$72,676**
Structural Engineering Simon Wong Engineering	$0	$8,120	$16,520	$840	$2,520	**$28,000**
Mechanical Engineering Cotrell/Deiranieh	$0	$2,688	$5,913	$538	$1,613	**$10,750**
Electrical Engineering MacDonald Engineering	$0	$2,250	$4,950	$450	$1,350	**$9,000**
Sub-Total	**$10,901**	**$27,593**	**$60,086**	**$5,461**	**$16,384**	**$120,425**
Geotechnical	$10,500					**$10,500**
Re-Imbursable Expenses	$636	$847	$1,907	$212	$636	**$4,237**
Total						**$135,163**

Nicoloff & Associates, Inc.
3405 Kenyon Street, Suite 511
San Diego, CA 92110
Tel. (619) 523-3684
Fax (619) 523-3691
E-mail: nicoloffassoc@covad.net

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On this 8 day of June, in the year of 2005, before

me Michael Mauger, personally appeared James M. Nicoloff,
here insert name and quality of officer

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

Signature of Notary

MICHAEL MAUGER
Commission # 1361411
Notary Public - California
San Diego County
My Comm. Expires Jun 17, 2006

ACTION OF THE SOLE DIRECTOR

IN LIEU OF ORGANIZATIONAL MEETING

OF

NICOLOFF & ASSOCIATES, INC.,

a California corporation

The Sole Director of the above Corporation hereby takes the following Action by written consent in lieu of holding its organizational meeting. This Action is taken pursuant to Section 307(b) of the California Corporations Code.

I.
ACCEPTANCE OF DIRECTORSHIP

The undersigned, James M. Nicoloff, having been elected as the sole director of Nicoloff & Associates, Inc., a California corporation (the "Corporation"), by the Written Consent of Sole Incorporator dated June 30, 1990, does hereby accept such appointment effective as of the date hereof.

II.
APPOINTMENT OF OFFICERS

WHEREAS, no Officers of this Corporation have been elected; and

WHEREAS, the Sole Director desires to elect Officers for this Corporation;

NOW, THEREFORE, BE IT RESOLVED, that the following person is duly elected to the offices preceding his name to serve for one (1) year and until his respective successors are chosen and qualify:

President:	JAMES M. NICOLOFF
Vice President:	MARIGENE F. NICOLOFF
Secretary:	JAMES M. NICOLOFF
Chief Financial Officer:	JAMES M. NICOLOFF