

STAFF REPORT



ITEM NO. **10**
CITY OF OCEANSIDE

DATE: February 22, 2006

TO: Honorable Mayor and City Councilmembers

FROM: Community Development and Transportation Department

SUBJECT: **APPROVAL OF PROFESSIONAL SERVICES AGREEMENTS WITH HARRIS & ASSOCIATES AND RIGHT-OF-WAY ENGINEERING SERVICES, INC. FOR PLAN CHECK SERVICES**

SYNOPSIS

Staff recommends that the City Council approve a professional services agreement (PSA) in the amount of \$75,000 with Harris & Associates of San Diego, and a professional services agreement in the amount of \$35,000 with Right-Of-Way Engineering Services, Inc., of Oceanside for plan check services for the Community Development and Transportation Department, and authorize the City Manager to execute the agreements.

BACKGROUND

The Community Development and Transportation Department currently uses contract services to assist City staff in plan checking new development on an as-needed basis. Staff recently reduced contract services in general plan checking and project processing but still requires assistance in plan-checking of hydrology and hydraulic studies and subdivision maps. The current level of new development requires the services of Harris and Associates for hydrology and hydraulic studies and Right-Of-Way Engineering Services, Inc., for subdivision maps.

ANALYSIS

Harris & Associates

Harris & Associates has been providing plan-checking services related to hydrology and hydraulic reports for the City since 2004. Staff has been completely satisfied with their performance and their knowledge of the city's drainage system. Staff sent Request for Proposals (RFP) to five engineering firms and Harris & Associates was the only firm that responded. Based upon fees, resume of individual proposed, knowledge of applicable

requirements, and previous experience in the same capacity staff recommends Harris & Associates to provide plan-checking services.

Their previous PSA's contract limit was set at \$49,900. Staff now recommends that the new contract limit shall not exceed \$75,000 to allow for changes in the building industry and staff assignments.

Right-Of-Way Engineering Services, Inc.

Right-Of-Way Engineering Services, Inc, has been providing map checking services and other related services to the City for over 10 years. Staff is extremely pleased with their quality of work and responsiveness to our needs. Staff sent RFPs to five firms and Right-Of-Way Engineering Services, Inc. was the only firm that responded. Based on previous experience, knowledge of applicable requirements and that they are an Oceanside business, staff recommends Right-Of-Way Engineering Services, Inc., for map checking services.

The proposed PSA for Right-Of-Way Engineering Services, Inc., of \$35,000 is under the limit required to be approved by City Council (\$50,000), but staff wanted to include the information for the City Council at this time.

FISCAL IMPACT

Developer fees fund the Transportation section's business unit. Current fee revenues and funds available in the permanent employee business unit due to unfilled permanent position vacancies are anticipated to cover the cost of the PSAs. A budget adjustment request has been processed to transfer funds from the Engineering Subdivision and Inspection permanent employee business unit to the consultant fee business unit to fund the contracts.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be provided.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve a professional services agreement in the amount of \$75,000 with Harris & Associates, of San Diego and a professional services agreement in the amount of \$35,000 with Right-Of-Way Engineering Services, Inc., of Oceanside for plan check services for the Community Development and Transportation Department, and authorize the City Manager to execute the agreements.

PREPARED BY:



Paul J. Pace
Transportation Operations Engineer

SUBMITTED BY:



Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant to the City Manager

Frank Watanabe, Community Development and Transportation Director



CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

**PROJECT: Plan Checking Services
(101) 414700**

THIS AGREEMENT is made and entered into this ____ day of _____, 2005, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and HARRIS & ASSOCIATES, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: Work with City staff to review grading plans, hydrology and hydraulic studies, street improvement and storm drain plans for correctness to city, regional, and local standards.
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City Engineer. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the City Engineer. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. CONSULTANT shall, throughout the duration of this Agreement maintain

Plan Checking Services

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 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

Plan Checking Services

of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

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

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

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct, negligent acts, errors or omissions or wrongful acts of conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not.

Plan Checking Services

Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortuous acts or omissions of the CONSULTANT.

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

- 7. COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of seventy-five thousand dollars (\$75,000). All work will be performed at an hourly rate, not to exceed, of \$125 (annual adjustments tied to the Consumer Price Index and agreed upon by the City) and invoiced monthly with each project identified individually (showing balance of contract).

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.

- 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 as required to meet the City's requirements. First plan checks will be completed within three weeks, with subsequent reviews being completed within two weeks. This timing can be modified dependant upon the project size and agreement between the CITY and the CONSULTANT. This agreement shall take effect two weeks after the City Council approval date, and shall be valid for a period of one year. Two one-year extensions may be granted on a year-to-year basis, based on acceptable performance, for a total of maximum term of three years.
- 9. 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.
- 10. 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.

Plan Checking Services

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.

- 11. **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.
- 12. **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 _____, 2005.

Harris & Associates
[INSERT NAME OF CONSULTANT]

CITY OF OCEANSIDE

By: *[Signature]* *Regional Manager*
Name/Title

By: _____
Steven R. Jepsen, City Manager

By: *[Signature]* *Associate*
Name/Title

APPROVED AS TO FORM:
[Signature] *DCM*
City Attorney

94-2385238
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

} ss.

On Nov. 9, 2005,
Date

before me, Nancy Irene Arroyo, Notary Public,
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

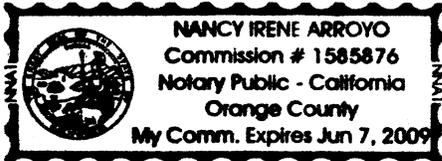
Ehab Gerges

Name(s) of Signer(s)

Javier Saunders

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: Plan Checking Services Contract

Document Date: November 9, 2005

Number of Pages: _____

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: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER

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Signer Is Representing: _____

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

**PROJECT: Plan Checking Services
(101) 414700**

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NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: Work with City staff to review subdivision and parcel maps for correctness to city, regional, and local standards.
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City Engineer. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the City Engineer. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial

Plan Checking Services

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.

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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 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

Plan Checking Services

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.
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6. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct, negligent acts, errors or omissions or wrongful acts of conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the

Plan Checking Services

CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortuous acts or omissions of the CONSULTANT.

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

- 7. COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of thirty-five thousand dollars (\$35,000). All work will be performed at an hourly rate, not to exceed, of \$90 (annual adjustments tied to the Consumer Price Index and agreed upon by the City) and invoiced monthly with each project identified individually (showing balance of contract).

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- 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 as required to meet the City's requirements. First plan checks will be completed within three weeks, with subsequent reviews being completed within two weeks. This timing can be modified dependant upon the project size and agreement between the CITY and the CONSULTANT. This agreement shall take effect two weeks after the City Council approval date, and shall be valid for a period of one year. Two one-year extensions may be granted on a year-to-year basis, based on acceptable performance, for a total of maximum term of three years.
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- 10. 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.

Plan Checking Services

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.

- 11. **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.
- 12. **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 _____, 2005.

RIGHT-OF-WAY ENGINEERING SERVICES, INC.
[INSERT NAME OF CONSULTANT]

CITY OF OCEANSIDE

By: *[Signature]*
Name/Title *Michael L Schlumpberger*
President, S Corporation

By: _____
Steven R. Jepsen, City Manager

By: _____
Name/Title
33-0290056
Employer ID No.

APPROVED AS TO FORM:
[Signature] DCN
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego } SS.

On 11-10-05 before me, Barbara J. Daniels,
(DATE) (NOTARY)

personally appeared Michael L. Schlumberger
SIGNER(S)

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



WITNESS my hand and official seal.

Barbara J. Daniels
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER

TITLE(S)

- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Professional Services Agreement
TITLE OR TYPE OF DOCUMENT

five
NUMBER OF PAGES

11-10-05
DATE OF DOCUMENT

City of Oceanside
OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

RIGHT THUMBPRINT
OF
SIGNER

