ITEM NO. 7

STAFF REPORT

CITY OF OCEANSIDE

DATE: March 17, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Financial Services Department

SUBJECT: **APPROVAL OF AMENDMENT 1 TO THE AGREEMENT FOR REVENUE COLLECTION SERVICES**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the agreement with American Capital Enterprises, Inc., of Temecula, extending the term of the agreement for a one-year period ending September 20, 2010, for revenue collection services; and authorize the City Manager to execute the amendment. The amount of the contract is contingent upon the amount collected. American Capital Enterprises, Inc., will receive twenty-eight (28) percent of the revenue collected, which is consistent with the industry standard.

BACKGROUND

The City of Oceanside has used several companies over the years to assist with revenue collection for debts owed to the City. The companies used depended upon the type of debt and the department billing the service. Throughout the years, the companies were changed based upon proposals and the performance of the current service provider.

After issuing a request for proposal in 2003 Council awarded a three-year contract to American Capital Enterprises. In 2006 another request for proposals was performed and American Capital Enterprises was again awarded a three-year contract. That contract allowed for up to five one-year extensions.

ANALYSIS

American Capital Enterprises, Inc., is a company that provides revenue collection services. By specializing in revenue recovery efforts, they have tools and staffing resources that are not available within the current City structure. After exhausting all debt recovery processes with City resources, the debts are forwarded to American Capital for further collection efforts.

There is no cost to the City to submit a debt to the collection agency. Upon recovery of the debt, the company is paid 28 percent of the debt and the City nets a 72 percent recovery rate. This recovery is on debts that were highly unlikely to have been

recovered. In addition, these debts incur an interest fee based upon the age of the debt at a rate of 10 percent per annum. This interest fee is typically retained by the collection agency however; our agreement splits this fee between the company and the City at a rate of 50 percent each.

The proposed amendment extends the contract for a one-year period. City staff is preparing another request for proposal for these services; however the extension is being proposed to ensure ongoing services while processing another request for proposals.

FISCAL IMPACT

The fiscal impact will be a function of the amount collected, thus not absolute in nature. With the struggling economy, the collection industry as a whole has experienced a decline in the amount they are able to recover. The cost of the services, 28 percent of collected revenue, is a small portion of the additional revenue the City will receive. In calendar year 2009 the collection agency recovered approximately $194,500 on behalf of the City. The City received approximately $136,850 of the revenue collected and the collection agency retained approximately $57,650. These amounts include the original debt and the interest. There is no charge to the City for any uncollected revenue.

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 to the agreement with American Capital Enterprises, Inc., of Temecula, extending the term of the agreement for a one-year period ending September 20, 2010, for revenue collection services; and authorize the City Manager to execute the amendment. The amount of the contract is contingent upon the amount collected. American Capital Enterprises, Inc., will receive twenty-eight (28) percent of the revenue collected, which is consistent with the industry standard.

PREPARED BY:

Sheri Brown
Revenue Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:
Michelle Skaggs-Lawrence, Deputy City Manager
Teri Ferro, Financial Services Director

Exhibit/Attachments:

1. Amendment to the Collection Agency Professional Services Agreement
2. Insurance Certificate
3. Original Professional Services Agreement

FIRST AMENDMENT TO CITY OF OCEANSIDE COLLECTION AGENCY AGREEMENT
[American Capital Enterprises]

This Amendment to the City of Oceanside Collection Agency Agreement ("Agreement") is made and entered into this ___ day of _____, 2010, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY" and AMERICAN CAPITAL ENTERPRISES INC., hereinafter designated as "CONSULTANT"

RECITALS

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement dated September 20, 2006, 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 extend the term of the agreement for a one-year period;

AMENDMENT

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

1. Page 4, Section 8. is amended as follows:

   "Timing requirements: the term of the agreement shall be one year commencing on September 20, 2009 and terminating on September 20, 2010. Pursuant to the terms of the September 20, 2006, Agreement, the City shall have the ability to extend the Agreement for four additional one-year periods."

2. 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 COSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures this _____ day of _____, 2010.

AMERICAN CAPITAL ENTERPRISES, INC.

By:_____
Ron Matheson
President/CEO

CITY OF OCEANSIDE

By:_____
Peter Weiss
City Manager

APPROVED AS TO FORM:

_____
City Attorney

NOTARY ACKNOWLEDGEMENTS OF CONSULTANTS MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Riverside

On February 11, 2010 before me, Vanessa Valenzuela Notary Public,
(Here insert name and title of the officer)

personally appeared Ron Matheson,

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.

Vanessa Valenzuela
Signature of Notary Public

VANESSA VALENZUELA
COMM. # 1807398
NOTARY PUBLIC - CALIFORNIA
RIVERSIDE COUNTY
MY COMM. EXP. AUG. 22, 2012

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

First Amendment to City
(Title or description of attached document)

of Oceanside Collection Agency
(Title or description of attached document continued)

Number of Pages 2 Document Date 2/11/10

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

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

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: COLLECTION AGENCY AGREEMENT

THIS AGREEMENT is made and entered into this 20 day of September, 2006, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and American Capital Enterprises Inc., hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: CONSULTANT will provide revenue collection services for the City of Oceanside. The collection services will include outstanding debt for utility billing, ambulance billing, parking citations and general accounts receivable. These services will be provided in accordance with the specifications/scope of work and instructions as outlined in the request for proposal and consultant's response and are attached hereto and incorporated herein as Exhibits 1 and 2 to the agreement.

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 Financial Services Director. 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 Financial Services Director. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

4. LIABILITY INSURANCE.

4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance (bodily injury and property damage)	
Combined Single Limit Per Occurrence	$ 1,000,000
General Aggregate	$ 2,000,000*
Commercial General Liability Insurance (bodily injury and property damage)	
General limit per occurrence	$ 1,000,000
General limit project specific aggregate	$ 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.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over $25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided

pursuant to this Section.

4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

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

4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.

4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.

5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars ($1,000,000.00).

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

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct, negligent acts, errors or omissions or wrongful acts of conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful

misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious 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 be from amounts derived from the collections as set forth in the CONSULTANT'S proposal letter dated June 13, 2006 and included in Exhibit 2, page 1 and 2. CONSULTANT to receive twenty eight (28) percent of all revenue collected on debts forwarded to CONSULTANT.

No payment shall be paid to CONSULTANT in excess of the twenty eight (28) percent without prior written approval of the Financial Services Director. CONSULTANT shall obtain approval by the Financial Services Director 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 Financial Services Director. This agreement shall be in effect commencing September 20, 2006, through September 20, 2009. This Agreement may be extended in the sole discretion of the CITY, in one-year time increments, not to exceed five (5) years. Any such extension shall be in a written amendment signed by both parties.

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. **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, or the CONSULTANT, then the CITY shall pay CONSULTANT for any work completed up to and including the date of the notice of termination of this

Agreement. 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 within thirty (30) days of the termination, except for those accounts in the process of collections as set forth below. Any work not deemed in the "process of collection" will be released by CONSULTANT and not subject to payment by the CITY. CONSULTANT is responsible to remit any revenue collected after the notice of termination to the CITY.

CONSULTANT will be paid pursuant to the contingency fee arrangement on accounts assigned and in the process of collection on the termination date. An account is in the "process of collection" when any of the following apply:

a) At the time of termination, the debtor is making and continues to make payments in accordance with an agreed upon payment plan arranged by consultant.
b) The CONSULTANT has obtained a promise of payment and payment is received within ninety (90) days of the termination date.
c) Suit has been filed with the appropriate court on the account by the CONSULTANT and is pending or has been reduced to a Judgment.
d) Payment is assured because of an ascertained future event (as determined at or prior to the date of termination), such as personal injury or Workers' Compensation liens, payment of dividends in a bankruptcy proceeding, probate of an estate, assignment for the benefit of creditors, or similar event.

11. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

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

12. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto. Any amendment must be approved by the City Council of the City of Oceanside to be effective.

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 20 day of September, 2006.

AMERICAN CAPITAL ENTERPRISES, INC.

By: _____
Ron Matheson,
President/CEO

CITY OF OCEANSIDE

By: _____
Barry E. Martin
Interim City Manager

95-3840461
Employer ID No.

APPROVED AS TO FORM:
_____ 9/5/
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.