

STAFF REPORT



ITEM NO. 9
CITY OF OCEANSIDE

DATE: May 16, 2007

TO: Honorable Mayor and City Council Members

FROM: Financial Services Department

SUBJECT: **AWARD OF A PROFESSIONAL SERVICES AGREEMENT TO DIEHL, EVANS & COMPANY, LLP, TO PERFORM THE ANNUAL AUDIT OF CITY FINANCIAL RECORDS FOR FY 2006-07, 2007-08, AND 2008-09**

SYNOPSIS

Staff recommends that the City Council approve a professional services agreement with Diehl, Evans & Company, LLP, in the total amount of \$151,740 for the annual audit of the City's financial records for fiscal years 2006-07, 2007-08, and 2008-09; and authorize the City Manager to execute the professional services agreement.

BACKGROUND

From May 2000 through June 2006, the City contracted with Caporicci & Larson to perform its annual audit of the City's financial records. Since the contract period has lapsed, proposals were solicited for audit services for fiscal years 2006-07, 2007-08, and 2008-09, with the option for one two-year extension. Audit services are to include:

- An audit performed in accordance with generally accepted auditing standards.
- An independent auditor's report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
- A separate single audit report on grant activity, internal control and compliance in accordance with U.S. Office of Management and Budget Circular A-128.
- Separate reports on the Oceanside Community Development Commission, Oceanside Building Authority, Oceanside Small Craft Harbor District, and Oceanside Public Financing Authority of the City of Oceanside.
- A separate management letter that discloses material and nonmaterial weaknesses in internal control, legal and contractual matters, and auditor recommendations for improvement.
- A report on the Appropriations Limit for each fiscal year.

ANALYSIS

A committee consisting of the Director of Financial Services, Interim Accounting Manager, Internal Auditor and Senior Management Analyst interviewed all of the audit firms that submitted proposals. Each firm was evaluated on the following criteria:

- Demonstrated understanding of the scope of work.
- The firm's recent related technical experience, specifically as it relates to the audit team assigned to perform the City's audit services.
- The audit team's demonstrated professional skills, credentials and professional activities.
- Timeliness of the audit work performed.
- Presentation to the selection committee.
- Anticipated support requirements of City staff.
- Technical advice throughout the year on special accounting issues.
- Proposed maximum fee.

The committee recommends that Diehl, Evans & Company, LLP, be hired to perform the audit services listed above for the following reasons:

- Significant experience with performing similar audits, specifically as it relates to experience of the senior auditor and manager of the audit team.
- Ability of the audit team to meet required deadlines for the City.
- Responsiveness to Request for Proposal.
- References from other cities where Diehl, Evans & Company, LLP has performed audit services.

Proposals received from audit firms ranged from the proposed maximum fees of \$45,000 to \$86,355 for the first fiscal year. As requested in the request for proposal, Diehl, Evans & Company, LLP submitted their proposed maximum fees for audit of fiscal years 2006-07, 2007-08, and 2008-09 and the succeeding two years, as follows:

- FY 2006-07 \$48,850
- FY 2007-08 \$50,560
- FY 2008-09 \$52,330

(Optional years)

- FY 2009-10 \$54,160
- FY 2010-11 \$56,055

FISCAL IMPACT

Sufficient monies are budgeted in the Financial Services Department for fiscal year 2007-08 for audit services.

COMMISSION/COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

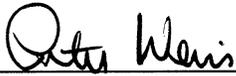
Staff recommends that the City Council approve a professional services agreement with Diehl, Evans & Company, LLP, in the total amount of \$151,740 for the annual audit of the City's financial records for fiscal years 2006-07, 2007-08, and 2008-09; and authorize the City Manager to execute the professional services agreement.

PREPARED BY:



Nita McKay
Financial Services Director

SUBMITTED BY:



Peter A. Weiss
Interim City Manager

Reviewed By:

Michelle Skaggs-Lawrence, Deputy City Manager



Attachment: Professional Services Agreement

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

SERVICES: ANNUAL FINANCIAL STATEMENT AUDIT

THIS AGREEMENT is made and entered into this ____ day of _____, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and DIEHL, EVANS & COMPANY, LLP, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1.0 **SCOPE OF WORK.** The project is more particularly described as follows:
 - 1.1 Express an opinion on the fair presentation of the City's basic financial statements in conformity with generally accepted accounting principles (GAAP) for the years ended June 30, 2007, June 30, 2008 and June 30, 2009. The City is defined, for financial reporting purposes, as inclusive of the following component units: the Oceanside Community Development Commission, the Oceanside Small Craft Harbor District, the Oceanside Building Authority, and the Oceanside Public Financing Authority.
 - 1.2 Express an opinion on the fair presentation of the City's combining and individual financial statements and schedules in conformity with generally accepted accounting principles. The auditor is not required to audit the supporting schedules contained in the comprehensive annual financial report. However, the auditor is to provide an "in-relation-to" opinion on the supporting schedules based on the auditing procedures applied during the audit of the basic financial statements and the combining and individual fund financial statements and schedules.
 - 1.3 Perform certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.
 - 1.4 Provide an "in-relation-to" report on the schedule of expenditures of federal awards based on the auditing procedures applied during the audit of the financial statements.
 - 1.5 Issue the following reports: (1) A report on the fair presentation of the financial statements in conformity with GAAP, including an opinion on the fair presentation of the supplementary schedule of expenditures of federal awards; (2) a report on compliance and internal control over financial reporting; and (3) a report on compliance and internal control over compliance applicable to each major federal program.

ANNUAL FINANCIAL STATEMENT AUDIT

2.0 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 Financial Services Director.

CONSULTANT shall report to the CITY any and all employees, agents, and consultant work performed in connection with this project, and shall be subject to the approval of the CITY.

3.0 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 this Agreement.

4.0 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:

<u>Comprehensive General Liability Insurance</u> (bodily injury and property damage)	
Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*
<u>Commercial General Liability Insurance</u> (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

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

ANNUAL FINANCIAL STATEMENT AUDIT

- 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 Financial Services Director 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.
- 5.0 **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall

ANNUAL FINANCIAL STATEMENT AUDIT

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.

- 6.0 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, 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.

- 7.0 COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$151,740 for fiscal years 2006-2007, 2007-2008 and 2008-2009 broken down as follows:

FY 2006-07	\$48,850
FY 2007-08	\$50,560
FY 2008-09	\$52,330

No work shall be performed by CONSULTANT in excess of the total contract price 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.

- 8.0 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.

ANNUAL FINANCIAL STATEMENT AUDIT

The auditor is to be complete with field work by the last business day in September. A draft report of the audit reports and recommendations to management will be made available for review by the City's management by the last business day in October. The final reports will be delivered by the last business day in November.

The City will provide the CONSULTANT with relevant schedules and reports in a timely manner to facilitate the CONSULTANT meeting above-mentioned deadlines.

9.0 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.

10.0 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.

11.0 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.

12.0 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.

ANNUAL FINANCIAL STATEMENT AUDIT

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 _____, 2007.

DIEHL, EVANS & COMPANY, LLP

CITY OF OCEANSIDE

By: Robert J. Callara, Partner
Name/Title

By: _____
Peter A. Weiss, Interim City Manager

By: R. P. Patel, Partner
Name/Title

APPROVED AS TO FORM:
John P. M.
City Attorney

95-3497193
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange } ss.

On 3 May, 2007, before me, Geoff Purchase, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Robert J. Callanan,
Name(s) of Signer(s)

Nitin P. Patel

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.



Place Notary Seal Above

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Professional Services Agreement

Document Date: 3 May 2007 Number of Pages: 60

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Robert J. Callanan

- 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: _____

Diehl, Evans & Company, LLP

Signer's Name: Nitin D. Patel

- 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: _____

Diehl, Evans & Company, LLP