ITEM NO. 8

STAFF REPORT

CITY OF OCEANSIDE

DATE: May 21, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department - Planning Division

SUBJECT: **APPROVAL OF AN AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT FOR THE OCEANSIDE SUBAREA PLAN SUPPORT AND APPROVAL OF A BUDGET APPROPRIATION FOR THE ADDITIONAL FUNDS**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 in the amount of $87,258 to the professional services agreement with Foothill Associates of San Diego to complete the Subarea Plan and present the final to City Council in 2008, and authorization for the City Manager to execute the agreement; and approval of a budget appropriation in the amount of $40,000 from the Drainage District 1-A Unallocated Fund Balance to the project account.

BACKGROUND

In 1993, the coastal California gnatcatcher was listed as threatened under the Federal Endangered Species Act (ESA). This listing affected a wide range of public and private projects in the City of Oceanside due to the significant amount of gnatcatcher habitat – coastal sage scrub (CSS) – that exists in the City. To proceed, projects in areas with gnatcatchers would have to completely avoid impacts or "take" CSS habitat or seek Federal authorization and permits. Several other species, such as the least Bell's vireo – a small song bird that utilizes wetland habitat – have been listed under the Federal and California ESA since the early 1990s. Currently, approximately 25 plant and animal species that are listed or proposed for listing occur or are associated with habitats in the City.

In 1991, the California Natural Communities Conservation Act (NCCP) was adopted, and the NCCP coastal sage scrub program was initiated in Southern California. In the initial phases of the program, conservation guidelines were developed, and the U.S. Fish and Wildlife Service adopted a special rule regarding the gnatcatcher and CSS pursuant to Section 4(d) of the Federal ESA. Under the Section 4(d) guidelines each jurisdiction in San Diego County participating in the NCCP CSS program were allowed to impact or "take" 5 percent of the existing CSS habitat in the jurisdiction. The City of Oceanside has been a participant in this program since 1993 and was allowed to take

75.4 acres of CSS. Currently, the city has approximately 0.4 acre of CSS take allowance remaining.

To fulfill its commitment to the NCCP program, the City has been a participant in the North County Multiple Habitat Conservation Program (MHCP). The MHCP is a subregional multiple habitat planning effort that encompasses land within the cities of Oceanside, Carlsbad, Encinitas, Escondido, San Marcos, Solana Beach, and Vista. This plan is being developed through a cooperative effort by the seven cities and the San Diego Association of Governments (SANDAG). A similar plan known as the Multiple Species Conservation Program (MSCP) was developed in the central and southern portion of the County. The MHCP Subregional Plan and Final Environmental Impact Statement/Report (EIS/EIR) were adopted and certified by the SANDAG Board of Directors on March 28, 2003. Each of the seven jurisdictions will implement their respective portion of the MHCP via citywide Subarea Plans. The City of Carlsbad adopted their plan in November 2004, and Oceanside is the next in line for adoption.

ANALYSIS

Foothill Associates is the biological consultant that has prepared this contract addendum to address the increase in scope of services necessary to complete the Subarea Plan. The Final Draft of the Subarea Plan and Open Space Management Plan were forwarded to the U.S. Fish and Wildlife Service and California Department of Fish and Game in December 2005, in anticipation of receiving only minor editorial comments. In November 2007, the City received extensive comments, requiring substantial additional analysis, meetings, document revisions, and mapping revisions. A summary of the proposed scope of services required to complete the Subarea Plan are attached to this report.

FISCAL IMPACT

Funding for the Subarea Plan of the Multiple Habitat Conservation program is provided in Drainage District 1-A, which has a current unallocated fund balance of $649,849 in account 511.3301. The project account 511.815641 has a current operating balance of $50,810. Therefore, the budget appropriation of $40,000 from 511.3301 to 511.815641.5392 will provide sufficient funding for Amendment 1.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

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 $87,258 to the professional services agreement with Foothill Associates of San Diego to complete the Subarea Plan and present the final to City Council in 2008, and authorization for the City Manager to execute the agreement; and approval of a budget appropriation in the amount of $40,000 from the Drainage District 1-A Unallocated Fund Balance to the project account.

PREPARED BY:

Jerry Hittleman
City Planner

SUBMITTED BY:

Peter A. Weiss
City Manager

ATTACHMENTS:

1. Professional Services Agreement

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Lauren Wasserman, Interim Development Services Director

Teri Ferro, Financial Services Director

CITY OF OCEANSIDE
AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT

PROJECT: SUBAREA PLAN SUPPORT

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment") is made and entered into this _____ day of _____, 2008, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and FOOTHILL ASSOCIATES, hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS, CITY and CONSULTANT are the parties to that certain Professional Services Agreement dated _____, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein, including drafting a Subarea Plan for presentation to the various state and federal wildlife agencies;

WHEREAS, the CONSULTANT performed substantial work on the original Agreement, and in December 2005, a draft Subarea Plan was forwarded to the various wildlife agencies for comment;

WHEREAS, in November 2007, the CITY received extensive comments from the U.S. Fish and Wildlife Service and the California Department of Fish and Game on the draft Subarea Plan, necessitating substantial additional analysis, meetings, document revisions, and mapping revisions;

WHEREAS, in order to respond to the comments received, complete the Subarea Plan and bring the finished project forward to the City Council for adoption, the parties desire to amend the Agreement to provide for changes and/or modifications to the scope of work and corresponding remuneration.

AMENDMENT

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

1. The Scope of Work is amended to include those tasks and assumptions delineated on Exhibit "A" attached hereto and made a part hereof.

2. The corresponding total budget to complete the tasks defined in Exhibit "A" shall not exceed $87,258.00.

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.

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 7th day of May, 2008.

FOOTHILL ASSOCIATES

By: Susan Whitney / Corporate Secretary / Treasurer
Name/Title

By: PRESIDENT
Name/Title

68-0402795
Employer ID No.

CITY OF OCEANSIDE

By: _____
Peter Weiss, City Manager

APPROVED AS TO FORM:

_____, DCA
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Placer

On May 7, 2008 before me, Candice Guider, Notary Public,
(Here insert name and title of the officer)

personally appeared Susan Whitney,

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.

Candice Guider
Signature of Notary Public

CANDICE TARA GUIDER
COMM. #1729447
NOTARY PUBLIC • CALIFORNIA
PLACER COUNTY
Comm. Exp. MARCH 8, 2011
(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

City of Oceanside Amendment #2
(Title or description of attached document)

Professional Services Agreement
(Title or description of attached document continued)

Number of Pages 11 Document Date May 7, 2008

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☒ Corporate Officer
  Secretary / Treasurer
  (Title)
- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they,~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Placer

On May 7, 2008 before me, Candice Guider, Notary Public,
(Here insert name and title of the officer)

personally appeared Kenneth D. Whitney,

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.

CANDICE TARA GUIDER
COMM. #1729447
NOTARY PUBLIC • CALIFORNIA
PLACER COUNTY
Comm. Exp. MARCH 8, 2011
MGC1

WITNESS my hand and official seal.

Candice Guider
Signature of Notary Public

(Notary Seal)

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- ☒ Corporate Officer
  president.
  (Title)
- ☐ Partner(s)
- ☐ Attorney-in-Fact
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  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

FOOTHILL ASSOCIATES

ENVIRONMENTAL CONSULTING • PLANNING • LANDSCAPE ARCHITECTURE

Scope of Work and Cost Estimate

EXHIBIT "A"

March 13, 2008

Project Name: **Oceanside Subarea Plan Support**

Client: **City of Oceanside**

Foothill Associates has prepared this contract addendum request to address the increase in the scope of services necessary to complete the City of Oceanside's Subarea Plan. The most recent previous contract addendum, signed by the City on April 25, 2007, was issued in anticipation of receiving only very minor editorial comments from the U.S. Fish and Wildlife Service and CA Department of Fish and Game reviewing team on the Subarea Plan and Open Space Management Plan. Comments from the agencies were received on November 21, 2007 after the budget authorization from the City had been approved. Furthermore, the comments were far more extensive than originally anticipated, requiring substantial additional analysis, meetings, document revisions, and mapping revisions. Per direction from the City, Foothill's team applied the entirety of the existing budget toward the necessary Subarea Plan revisions; however, the extent of the comments requires that additional budget be made available beyond the originally authorized amount.

A summary of the proposed services is provided below. Contract labor and expenditures are currently over the previously authorized total. Those overages are included in the costs presented below. The total estimated additional budget (including the current budget overrun) required to complete the scope of services described below is $81,404. A detailed breakdown of the existing and proposed costs is provided in the attached budget spreadsheet.

Task One:	**Subarea Plan Analyses to Respond to Agency Comments** Foothill Associates and its subconsultants (Dudek and Onaka Planning & Economics) will conduct the necessary quantitative analyses and evaluations to address assigned portions of the agency comments on the Subarea Plan. All comments not assigned to either the City or the wildlife agencies (WLA) will be addressed by the consulting team. • Task 1.1 will include analyses necessary to address comments related to the covered species analysis (Comment 8, 9, 21, 52, 89, and 90). Dudek will direct Foothill GIS staff on all necessary GIS calculations necessary. • Task 1.2 will include analyses necessary to address comments related to land management and monitoring (Comment 38, 58, 59, and 60). • Task 1.3 will include analyses necessary to address other miscellaneous comments (Comments 10, 11, 29, 31, 35, 54, 77, 79-82, 88, 98-99, 100-103, 108, 145-146, 151).	**$43,904**

	• Task 1.4 will include the preparation of a revised financing plan for the project, including updates to 1) the estimates of annual habitat management costs for collections of habitat areas identified by categories of land ownership, 2) the estimates of habitat restoration costs, 3) the estimates of Priority 1 and 2 habitat area acquisition costs, and 3) the discussion of alternative funding sources to implement the Subarea Plan. • Task 1.5 will include the preparation of maps for use in a meeting with WLA staff to map additional changes in vegetation types in the City, per WLA request. Maps will be built on 2007 aerial photography. Mapping markups will be digitized into the GIS dataset and used for all subsequent analysis and mapping. This subtask also includes mapping the impact of 100' fire buffers on preserves within the Wildlife Corridor Planning Zone. Simple working maps will be prepared of the fire buffer analysis and used in discussions with the WLA. • Task 1.6 will include necessary GIS data updates, analysis, and report output to support the analyses noted above. Data updates are extensive and require collection of new data for some comments. All GIS analyses run previously in the Subarea planning process must be repeated, along with several new analyses required by WLA comments. • Effort necessary to research and complete the tasks assigned to the City and the WLA is not included in this cost proposal; however, Task 3 of this proposal provides an allowance for review of their work. The current budget overrun is included in the cost for Task 1.	
Task Two:	**Subarea Plan Document Revisions to Respond to Agency Comments** Foothill Associates' team will provide Subarea Plan text and map revisions related to the comments and analyses addressed in Task 1 above. • Task 2.1 will include all text revisions to the document. Revisions will be prepared in strikeout-underline format. A digital copy will be made available to the City and to the WLA for review. This proposed budget includes one further round of revisions to address *extremely minor* errors or problems with the document. Any additional new and substantial comments from the WLA or the City are not included, but can be provided at additional cost if needed. Ten (10) printed copies of the final document will be provided along with one fully	**$12,340**

editable electronic copy and one camera-ready electronic copy.

- Task 2.2 includes all necessary revisions to maps and graphics included in the document. Due to the extensive nature of the data updates, all maps must be updated. Because the maps were originally created by AMEC Environmental and are based on obsolete technology, Foothill must recreate all map layouts in ArcMap softare. All maps will be formatted to match the original maps as closely as possible, while reflecting the required changes. Several additional maps will also be created, per specific comments from the WLA. Up to ten (10) large format map printouts and color map inserts for the printed copies of the final plan are included in this proposal.

Task Three:	**QA/QC Review of Agency, Consultant, and City Revisions to the Subarea Plan** Foothill's consulting team will provide a review of Subarea Plan revisions made by the WLA, consultants, and/or City. Dudek's review will focus on ensuring consistency and accuracy throughout the document. Foothill's review will focus primarily on grammatical, formatting, or editorial issues.	**$3,680**
Task Four:	**Team Meetings and Project Management** The project has required extensive coordination and meetings thus far, and this trend is expected to continue. Foothill Associates will coordinate the efforts of the team and assure the project stays on track. • Task 4.1 addresses meetings between team members and with the WLA. Each member of the Foothill team will attend up to four (4) team/WLA meetings under this scope of work. • Task 4.2 includes all other aspects of project management necessary for the project, including: 1) sharing of data and information not covered by other tasks, 2) coordinating meeting dates, schedules, and deliverables, 3) maintaining a current copy of the master comment matrix, complete with the team's responses to and the status of each comment, 4) coordinating with the City and/or the WLA on questions and clarifications. 5) and basic tasks such as invoicing, status reports, etc. • Task 4.3 includes preparation for and participation in one presentation to the Oceanside City Council. Key team members from Foothill Associates and our subconsultants will be present. Our assumption is that our consulting team will lead the preparation of the proposal content, in close coordination with the City, and that the presentation will	**$23,280**

concentrate on presenting the salient details of the Final Subarea Plan, as well as the process that led to its approval.

- Task 4.4 includes basic initial coordination with the California Coastal Commission in support of receiving plan approval. Because the Coastal Commission process is somewhat unpredictable, this task includes preparing for and participating in only one (1) initial meeting with the Coastal Commission to support the City's initial discussions the agency. Additional support for the remainder of the Coastal Commission process can be provided at additional cost if needed.

Labor Estimate:	**$83,204**
Other Direct Costs Estimate:	**$4,054**
Total Addendum:	**$87,258**

Assumptions:

- Proposed budget addresses only the response to comments currently in-hand from the WLA, City, or other reviewing agencies. Work necessary to respond to additional rounds of comments is not included.
- This addendum includes initial coordination with the Coastal Commission does not include analysis or document revisions to address comments received by them, since it is not possible now to know what those comments might be.
- This addendum does not include preparation of a CEQA document for the project or efforts necessary to support the preparation of a CEQA document.
- This addendum formalizes the decision to reallocate the previously-approved Open Space Management Plan funding toward completion of the Subarea Plan. Any effort necessary to complete the Open Space Management Plan will require additional funding.
- Foothill Associates assumes production of ten (10) printed copies total.

OPEN SPACE MANAGEMENT PLAN AND SUBAREA PLAN SUPPORT

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 25th day of April, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Foothill Associates, hereinafter designated as "CONSULTANT".

RECEIVED
JUN 08 2007
Planning Department

RECITALS

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

B. CONSULTANT has submitted a proposal to provide planning 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 AMENDMENT.** The project is more particularly described as follows:

Task 1. Open Space Management Plan Support and Revisions $13,250
Foothill Associates will revise and finalize the City-wide Open Space Management Plan based on input from the City and the wildlife agencies on the December 2005 version of the plan. The plan will be resubmitted with the Final Subarea Plan following council approval as required to obtain a take permit under the MHCP. Onaka Planning & Economics will develop an overall financing plan for the City-wide program. Foothill Associates will provide technical editing and document production services the Final Subarea Plan document.

OPEN SPACE MANAGEMENT PLAN AND SUBAREA PLAN SUPPORT

Task 2. Subarea Plan Support and Revisions **$11,550**

Foothill Associates will serve as the technical team leader responsible for developing revised text based on comments or revisions necessary for the December 2005 Final Oceanside Subarea Plan. Foothill Associates will coordinate final changes to the financing plan to be prepared by Onaka Planning & Economics. Foothill Associates will prepare final revisions to the document for the City to obtain take permits from the wildlife agencies under the Multiple Habitat Conservation Program (MHCP). Foothill Associates will provide technical editing and document production services the Final Subarea Plan document.

Task 3. Project Meetings **$3,850**

Foothill Associates assumes four team/agency meetings under this task.

The total budget to develop the Oceanside Open Space Management Plan and Subarea Plan Support based on the scope of work amendment described above is **$28,650.**

Assumptions

- Foothill Associates assumes one round of revisions to the OSMP based on comments from the wildlife agencies. No significant additional comments from the wildlife agencies are assumed for the Subarea Plan.

- No FPA changes or new conservation analyses will be necessary under Task One and Task Two.

- No significant changes to GIS data or to existing document maps/graphics will be necessary.

- Foothill Associates assumes production of 30 hardcopies total (15 per document).

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 Planner in performing work in accordance with this Agreement in order to receive clarification as to the result, which the CITY expects to be accomplished by CONSULTANT. The City Planner, 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 Planner may delegate authority in connection with this Agreement to the City Planner's designees. For the purposes of directing the CONSULTANT'S performance in accordance with this Agreement, the City Planner delegates authority to a Senior Planner.

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 Planner, plans or documents for the project as described in the Scope of Work Amendment, and in the time and manner set forth in this Agreement.

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

1.2.1 Provide access to and furnish one copy of reports as requested.

1.2.2 Duplicate all final plans and specifications.

1.2.3 Provide overall project management.

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 2.3. 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 the project within 1 year of the date of this professional services agreement.

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

2.4 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 **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 Planner. 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 Planner. 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.

4.0 **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 Planner.

5.0 **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.

6.0 **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, 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 Five Hundred Thousand dollars ($ 500,000).

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 Planner 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 planning, 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 scope of work and cost in this agreement. No cost changes shall be made during the term of this Agreement without prior written approval of the City Planning Director. CONSULTANT'S compensation for all work performed in accordance with this Agreement shall not exceed the total contract price of **$28,650.00**.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the City Planner. CONSULTANT shall obtain approval by the City Planner 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 Planner for verification of billings, within a reasonable time of the City Planner 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 Planner.

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 **DISPUTE RESOLUTION.**

a. Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be first submitted to mediation, the cost of which shall be borne equally by the parties.

b. 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 Planner 300 North Coast Highway Oceanside, CA 92054	Foothill Associates Mike Howard 10509 Vista Sorrento Parkway, Suite 120 San Diego, CA 92121

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:

Foothill Associates

By: _____ / VICE PRESIDENT
Name/Title

By: _____ / Corporate Secretary
Name/Title

68-0402795
Employer ID No.

CITY OF OCEANSIDE

By: _____
Peter A. Weiss, Interim City Manager

APPROVED AS TO FORM:

_____
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

G:\Word Documents\AGREEMENTS\PROFESSIONAL SERVICES AGREEMENTS\Professional Services Agreement Long Form 2003.doc

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)

COUNTY OF Placer)

On April 25, 2007 (DATE) before me, Candice Guider, Notary Public (NAME, TITLE OF OFFICER – E.G.., "JANE DOE, NOTARY PUBLIC

personally appeared, Kathleen Kiish and Susan Whitney

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.

Candice Guider (SEAL)

NOTARY PUBLIC SIGNATURE

CANDICE TARA GUIDER
COMM. #1729447
NOTARY PUBLIC • CALIFORNIA
PLACER COUNTY
Comm. Exp. MARCH 8, 2011

OPTIONAL INFORMATION

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.

TITLE OR TYPE OF DOCUMENT City of Oceanside Open Space Management Plan and Subarea Plan Support.

DATE OF DOCUMENT April 25, 2007. NUMBER OF PAGES 11

SIGNERS(S) OTHER THAN NAMED ABOVE _____

SIGNER'S NAME _____ SIGNER'S NAME _____

RIGHT THUMBPRINT	RIGHT THUMBPRINT