

STAFF REPORT



ITEM NO. 15

CITY OF OCEANSIDE

DATE: June 20, 2007

TO: Honorable Mayor and City Council Members

FROM: Public Works Department

SUBJECT: **APPROVAL OF AMENDMENT 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH APB CONSULTING, INC., TO MANAGE CIP PROJECTS**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 in the amount of \$70,000 to the Professional Services Agreement with APB Consulting, Inc., for ongoing Capital Improvement Program (CIP) project management, and authorize the City Manager to execute the amendment.

BACKGROUND

City Council approved a professional services agreement in the amount of \$62,400 with APB Consulting, Inc., at its August 2, 2006, meeting (Attachment 1).

Amendment 1 to the current Professional Services Agreement with APB Consulting, Inc., is recommended to help manage the City's current workload of CIP projects. All services will be rendered by Peter Biniatz, who recently retired from City employment.

The Public Works Department recently experienced a loss of personnel available for work on CIP projects because of staff turnover and reassignments. The present in-house staff level is insufficient to manage the Public Works Department's workload of over 120 projects.

A current agreement with APB Consulting, Inc., exists in the amount of \$62,400. The total amount of compensation for the work required by the Professional Services Agreement, including Amendment 1, shall not exceed \$132,400.

ANALYSIS

APB Consulting, Inc., will perform all administrative and project management tasks required for the following CIP projects:

- Fuel tank remediation at 1617 Mission Avenue
- El Camino Real and Mesa Drive widening improvements
- Citywide sidewalk projects
- Pedestrian Safety Corridor project
- Annual Slurry Seal program
- Mira Mesa Slope Repair project

APB Consulting's hourly rate is \$60.

FISCAL IMPACT

A maximum of \$70,000 in project management services is included in this agreement. Sufficient funding is available in the project accounts of the CIP projects to be managed by APB Consulting, Inc. Since all expenses are being absorbed by existing budgeted projects, no additional budget is necessary to pay for these services.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be provided.

COMMISSION OR COMMITTEE REPORTS

Does not apply.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

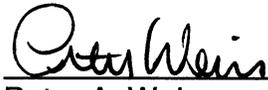
Staff recommends that the City Council approve Amendment 1 in the amount of \$70,000 to the Professional Services Agreement with APB Consulting, Inc., for ongoing Capital Improvement Program (CIP) project management, and authorize the City Manager to execute the amendment.

PREPARED BY:

SUBMITTED BY:

for 

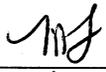
Gary Kellison
Senior Civil Engineer



Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Joseph Arranaga, Acting Deputy Public Works Director



Scott O. Smith, City Engineer



Attachment 1

**CITY OF OCEANSIDE
AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: Engineering Project Management Services
101.414710**

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment") is made and entered into this ____ day of _____, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and A P B Consulting, hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement dated July 6, 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 amend the Agreement to provide for changes and/or modifications to the compensation clause due to the increased work load.

AMENDMENT

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

1. SECTION 7, **COMPENSATION**, is hereby amended, as follows, to increase the total, not-to-exceed compensation by \$70,000:

Consultant's compensation for all work required by the Professional Services Agreement, including this amendment, shall not exceed \$132,400.

2. Except as expressly set forth in this Amendment, all other provisions of the Agreement shall remain in full force and effect and are 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.

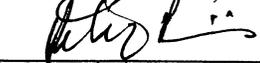
IN WITNESS WHEREOF the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment, and have caused this Amendment to be

Engineering Project Management

executed by setting hereunto their signatures this _____ day of _____, 2007.

A P B CONSULTING, INC.

CITY OF OCEANSIDE

By: 
Peter Biniiaz

By: _____
Peter A. Weiss, Interim City Manager

By: Owner
Name/Title

APPROVED AS TO FORM:

870775003
Employer ID No.


City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

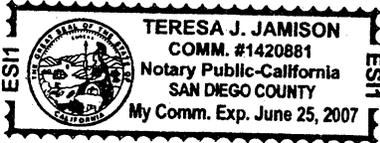
State of CALIFORNIA

County of SAN DIEGO

On MAY 30, 2007 before me, TERESA J. JAMISON, NOTARY PUBLIC
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared PETER BINIAZ
Name(s) of 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.

Teresa J. Jamison
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: CITY OF Oceanside AMENDMENT TO PROFESSIONAL SERV. AGMT

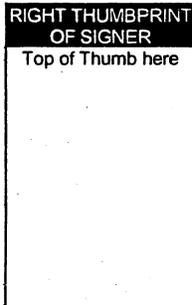
Document Date: UNK. Number of Pages: THREE

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: PETER BINIAZ

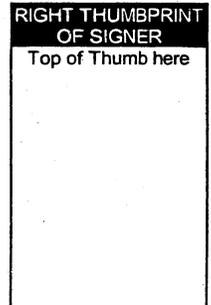
- Individual
- Corporate Officer
- Titles(s): _____
- Partner - Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other:



Signer Is Representing:

Signer's Name: _____

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



Signer Is Representing:

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

Engineering Project Management

THIS AGREEMENT is made and entered into this 6th day of July, 2006, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and APB Consulting, Inc., hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The services to be rendered under this agreement are more particularly described as follows:

Consultant will be responsible for all administrative and project management tasks necessary for the conception, design, bidding and construction of capital improvement program projects for the CITY. These tasks include:

- Defining the project scope and construction limits
- Estimating expected bid costs
- Producing project schedules and progress reports
- Completing the environmental assessment form
- Researching CITY records for right-of-way and buried utility information
- Completing outside agency and CITY permit applications
- Administering the consultant selection process for required engineering or architectural design professionals.
- Coordinate the plan check process between the CITY and consultant design professionals
- Administer the construction bidding process
- Process the construction contract documents for approval
- Schedule and conduct preconstruction and field construction progress meetings.
- Review and process contractor construction payments and proposed construction change orders.
- Coordinate project close-out and acceptance by the client CITY department.

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The CONSULTANT will perform the above tasks for the following projects:

- Fuel tank remediation at 1617 Mission Avenue
- Mesa Drive sidewalk improvements
- El Camino Real and Mesa Drive widening improvements
- Vista del Rey grading and drainage improvements
- Capistrano Park sidewalk and slope repairs
- Ivey Road improvement
- Other projects on an as-needed basis

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 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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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 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.

Engineering Project Management

- 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. Section omitted.
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.

Engineering Project Management

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$62,400.

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. The term of this agreement shall be one year from the date of execution.

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.

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.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of SAN DIEGO

On JULY 6, 2006 before me, TERESA J. JAMISON, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared PETER BINIAZ
NAME(S) OF 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.

Teresa J. Jamison
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER

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

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

DESCRIPTION OF ATTACHED DOCUMENT

PROFESSIONAL SERVICES AGREEMENT
TITLE OR TYPE OF DOCUMENT

Six
NUMBER OF PAGES

7-6-06
DATE OF DOCUMENT

N/A
SIGNER(S) OTHER THAN NAMED ABOVE