



DATE: July 1, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Financial Services Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT WITH JAMES E. MILLER
FOR INTERNAL AUDIT AND FINANCIAL CONSULTING SERVICES
FOR FISCAL YEAR 2009-2010**

SYNOPSIS

Staff recommends that the City Council approve a one-year professional services agreement with James E. Miller of Irvine in an amount not to exceed \$78,000 to provide internal audit and financial consulting services for FY 2009-2010, and authorize the City Manager to execute the agreement.

BACKGROUND

The City utilizes external auditors to provide an opinion on the annual Citywide financial statements. As a function of their activities in providing an opinion, they review only major financial areas that have a material effect on the financial statements. As such, many activities in the area of processing and internal controls are not reviewed in depth and can result in defalcations or misstatements of the financial entries. The purpose of an internal auditor is to focus more on processes and internal controls to identify efficiencies and potential revenue opportunities.

Pursuant to Oceanside Code 28A requiring three competitive proposals, the Financial Services Department contacted three consulting firms for quotes. Macias Gini & O'Connell LLP, Lance Soll & Lunghard LLP, and James E. Miller responded. Mr. Miller's quote was the lowest and most responsive, and staff determined that the City will benefit from his previous experience with the City.

ANALYSIS

Financial Services is responsible to internal customers throughout the City for providing accounting and collection functions for all City departments. The attached agreement will assist in meeting these Citywide demands.

Under the supervision of the Director of Financial Services, Mr. Miller will provide financial expertise in an internal audit function. Review of financial processes and procedures within the City shall include, but not be limited to, internal service fund charges, cost

allocation plan charges, transient occupancy tax collections and reporting, encumbrance accounting, and job costing for Capital Improvement Program projects.

Mr. Miller has in excess of twelve years of direct municipal finance experience and more than five years as a manager with a large local public accounting firm. His diverse experience in municipal finance and consulting will allow him to interact effectively with all levels of City staff. Mr. Miller has assisted the Financial Services Department with several projects and has identified \$571,000 of uncollected transient occupancy tax revenues due to the City.

FISCAL IMPACT

Attachment 1 is the City's professional services agreement with Mr. Miller. It provides information detailing the Department's agreement with the consultant. The Financial Services Department operating budget fiscal year 2009 – 2010 includes an appropriation in the amount of \$78,000 for the engagement of an internal auditor. Mr. Miller will be paid twice monthly on a per-hour basis.

COMMISSION OR COMMITTEE REPORT

Does not apply.

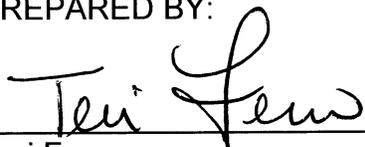
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve a one-year professional services agreement with James E. Miller of Irvine in an amount not to exceed \$78,000 to provide internal audit and financial consulting services for FY 2009-2010, and authorize the City Manager to execute the agreement.

PREPARED BY:



Teri Ferro
Director of Financial Services

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of July, 2009, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and James E. Miller, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows:

At the direction of the Director of Finance, provide financial expertise in an internal audit function. Review of financial processes and procedures within the City shall include, but not be limited to, internal service fund charges, cost allocation plan charges, transient occupancy tax collections and reporting, encumbrance accounting, consolidation of the chart of accounts in preparation for the financial software conversion, and job costing for capital improvement program projects. Consultant will produce documentation within timeframe assigned for each individual project, make recommendations to Management, and assist with implementation of the recommendations for improvement.

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 Director of Finance. 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 consultant, and all shall be subject to the approval of the CITY.

CONSULTANT shall be obligated to fulfill the scope of work provided herein for the compensation set forth in Section 7 of this Agreement. City shall provide no training to CONSULTANT, nor shall CONSULTANT be subject to an evaluation system to measure the details of how the work is performed. As an independent Contractor, CONSULTANT shall not be reimbursed for expenses. CONSULTANT shall have the ability to seek other business opportunities not in conflict with the scope of work in this Agreement. CONSULTANT shall not receive any benefits. CONSULTANT may perform the work authorized by this Agreement at a location determined by CONSULTANT to be most efficient for the timely completion of the scope of work.

Professional Services Agreement

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, if applicable.

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 \$500,000

Automobile Liability Insurance \$500,000

4.3 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.

4.4 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.

4.5 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.

4.6 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

Professional Services Agreement

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.

- 4.7 Maintenance of insurance by the CONSULTANT as specified in the Agreement Shall in no way be interpreted as relieving the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.

5. **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. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$78,000 for a one-year period from the date of approval of this agreement. Compensation will be at an hourly rate of \$58.00. The CONSULTANT, on a bi-monthly basis, will provide invoices with the number of hours worked noted.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the Director of Finance. CONSULTANT shall obtain approval by the Director of Finance 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 Director of Finance within one year of this agreement.

Professional Services Agreement

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.
12. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures this 1st day of July, 2009.

James E. Miller

By: James E. Miller, Owner
Name/Title

By: _____
Name/Title

Employer ID No.

CITY OF OCEANSIDE

By: _____
Peter A. Weiss, City Manager

APPROVED AS TO FORM:

John P. [Signature]
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

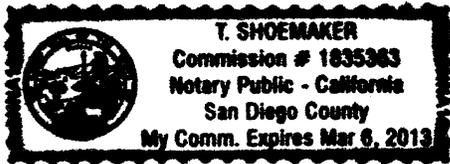
County of San Diego }

On 6/11/09 before me, T. Shoemaker, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared James E. Miller
Name(s) of Signer(s)

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.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

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: 7/01/09 Number of Pages: 4

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

Capacity(ies) Claimed by Signer(s)

Signer's Name: James E. Miller

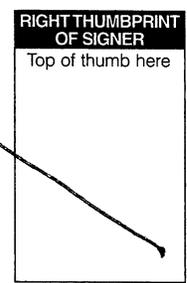
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: Self

Signer's Name: _____

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



Signer Is Representing: _____

My Comm. Expires Mar 8, 2013
San Diego County
Notary Public - California
Commission # 1832823
T. SHOEMAKER

