

STAFF REPORT



ITEM NO. 13
CITY OF OCEANSIDE

DATE: July 11, 2007

TO: Honorable Mayor and City Council Members

FROM: Financial Services Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT WITH JAMES E. MILLER
FOR INTERNAL AUDIT AND FINANCIAL CONSULTING SERVICES
FOR FISCAL YEAR 2007-08**

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 for internal audit and financial consulting services for fiscal year 2007-08, 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.

For fiscal year 2006-07, the Financial Services Department contacted three consulting firms for quotes, satisfying the City's purchasing policy. Moreland and Associates, Diehl, Evans & Company, and James E. Miller responded. Mr. Miller was awarded the professional services for fiscal year 2006-07. Because he is familiar with the City's internal control processes and is currently conducting large revenue and accounts receivable audits, the Financial Services Department is recommending that the City Council approve the agreement with Mr. Miller.

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. The agreement will allow the City to

provide professional internal audit services without having to bear the expense of a full-time, benefited position.

Under the supervision of the Director of Financial Services, Mr. Miller has provided financial expertise in an internal audit function during fiscal year 2006-07. He has reviewed and conducted internal audits of the City's petty cash policies and procedures, the City's Cal Card (purchasing card) program and as mentioned above, is currently reviewing the City's cashiering, revenue billings and collections procedures, including auditing the City's Transient Occupancy Tax reporting and collections. Additionally, Mr. Miller has assisted the Financial Services Department in implementing purchasing policy and procedural changes, including enhanced internal control review, has reviewed the City's financial trend analyses and provided additional financial analyses where needed, and has assisted in the review of the City's cost allocation plan charges. Review of financial processes and procedures within the City for fiscal year 2007-08 shall include, but not be limited to, completion of the cashiering and revenue billings and collections audit, continuing transient occupancy tax collections and reporting audits, internal service fund charges, encumbrance accounting, consolidation of the chart of accounts in preparation for the financial software conversion, and job costing for capital improvement program projects.

Mr. Miller has in excess of eleven years of direct municipal finance experience and over 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 already demonstrated his ability to identify areas of weaknesses and offer sound solutions to resolving those weaknesses.

FISCAL IMPACT

The Financial Services Department operating budget for fiscal year 2007-08 includes an appropriation in the amount of \$78,000 for the engagement of an internal auditor. Mr. Miller will be paid bi-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

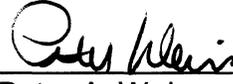
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PREPARED BY:



Paul Bussey
Interim Financial Services Director

SUBMITTED BY:



Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: INTERNAL AUDITOR

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 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.

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.

Professional Services Agreement

4. LIABILITY INSURANCE.

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

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

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence \$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 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.

Professional Services Agreement

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.

6. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$78,000. Compensation will be at an hourly rate of \$50.00. 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.

7. **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 the effective date of this agreement.

This agreement may be terminated by the CITY for convenience by providing (30) thirty days written notice to CONSULTANT. In such an event, the CITY shall pay CONSULTANT the reasonable value of the services performed as of the date of termination.

8. **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.

Professional Services Agreement

9. **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.

10. **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.

11. **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 _____ day of _____, 2007.

James E. Miller

CITY OF OCEANSIDE

By: James E. Miller / owner
Name/Title

By: _____
Peter A. Weiss, Interim City Manager

564-84-6696
Tax ID No.

APPROVED AS TO FORM:
John Paul
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

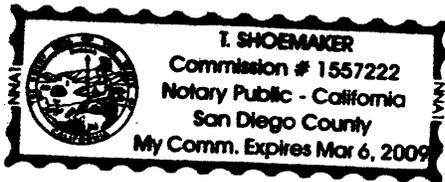
On 6/19/07 before me, T. Shoemaker, Notary Public

personally appeared James E. Miller

- 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.



Place Notary Seal Above

T. Shoemaker
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 Professional Services Agreement

Document Date: No date 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: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here



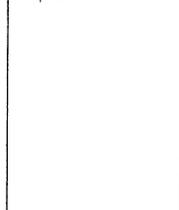
Signer Is Representing: Self

Signer's Name: _____

- 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: _____