



DATE: August 18, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT WITH O'DAY CONSULTANTS FOR ENGINEERING DESIGN AND CONSTRUCTION SUPPORT FOR THE WIDENING OF MISSION AVENUE AT VALLEY HEIGHTS DRIVE**

SYNOPSIS

Staff recommends that the City Council approve a professional services agreement with O'Day Consultants, Inc., of Carlsbad, in the amount of \$40,768 for engineering design and construction support for the Mission Avenue Widening at Valley Heights Drive project, and authorize the City Manager to execute the agreement.

BACKGROUND

Mission Avenue serves as a secondary arterial from the coast to Frazee Road. Mission Avenue has four lanes and a center turning lane. Traveling eastbound at the intersection of Francisca Street and Mission Avenue, Mission Avenue narrows down to two lanes for approximately six hundred feet and then widens again to four lanes.

On February 24, 2010, City Council authorized the land acquisition at 4513 Mission Avenue necessary to complete the widening project.

ANALYSIS

The Mission Avenue widening project consists of 350 linear-feet of road improvements including new curb, gutter, sidewalk, a retaining wall and relocation of utilities. The improvements will complete the eastbound lanes at the intersection of Mission Avenue and Valley Heights Drive. At project completion, there will be two eastbound and two westbound travel lanes.

O'Day Consultant's was selected for the design work from the City's on-call list for engineering services. Four firms on the on-call list submitted proposals; O'Day Consultants was selected because they were the most qualified and provided the lowest cost and they were the firm involved with the preliminary design.

O'Day Consultants has previously performed preliminary design work for the same project under a separate professional services agreement, the cumulative amount of work performed by O'Day consultants will exceed \$50,000. Therefore, under the City's Purchasing Guidelines this second agreement is subject to approval by the City Council.

A portion of the City's Mission Avenue widening effort overlaps a segment of right-of-way which will be improved by an adjacent residential development. City staff is currently negotiating cooperative funding alternatives with the developer's representatives. Staff believes a joint improvement agreement may be drafted approximately at the time construction drawings are completed. If acceptable cost sharing terms are reached, staff will bring the joint improvement agreement to City Council for approval.

FISCAL IMPACT

Currently there is \$199,309 in the CIP project account 901561400561. The amount of the professional services agreement is \$40,768, therefore sufficient funds are available.

INSURANCE REQUIREMENTS

The City's standard insurance requirements have been met and are currently in effect.

COMMISSION OR COMMITTEE REPORT

Does not apply

CITY ATTORNEY'S ANALYSIS

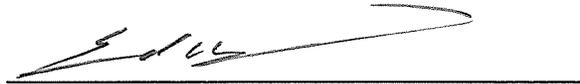
The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

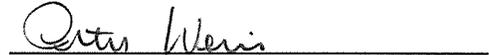
Staff recommends that the City Council approve a professional services agreement with O'Day Consultants, Inc., of Carlsbad, in the amount of \$40,768 for engineering design and construction support for the Mission Avenue Widening at Valley Heights Drive project, and authorize the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:



Ed Vasquez
Project Manager



Peter A. Weiss
City Manager

REVIEWED BY:

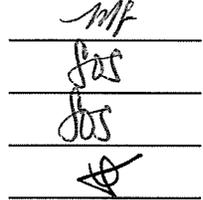
Michelle Skaggs Lawrence, Deputy City Manager

George Buell, Development Services Director

Scott O. Smith, City Engineer

Teri Ferro, Financial Services Director

Exhibit A – Professional Service Agreement with O'Day



RECEIVED
MAY 07 2010
BROOKFIELD HOME

091269-02

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

**PROJECT: MISSION AVENUE WIDENING AT VALLEY HEIGHTS DR.
901561400561**

THIS AGREEMENT, dated _____, 2010, for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and O'Day Consultants, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: Provide full engineering design and construction support for the widening of Mission Ave. at Valley Heights Dr. as detail in Exhibit "A", Scopes I-VIII.
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

**MISSION AVENUE WIDENING AT
VALEEY HEIGHTS DR. 901561400561**

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	\$ 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
---------------------------------------	--------------

*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

**MISSION AVENUE WIDENING AT
VALEEY HEIGHTS DR. 901561400561**

of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

- 4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, 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. **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 One Million Dollars (\$1,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

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 CONSULTANT'S work, including the negligent acts, errors or omissions or wrongful acts or 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,

**MISSION AVENUE WIDENING AT
VALLEY HEIGHTS DR. 901561400561**

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 founded upon, 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. **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.
8. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$40,768.00

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 that result in incidental expenses to CITY.
9. **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 Engineer within 120 days.
10. **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.
11. **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.

**MISSION AVENUE WIDENING AT
VALEEY HEIGHTS DR. 901561400561**

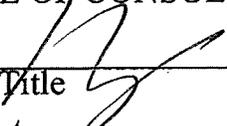
available to CITY.

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.

12. **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.
13. **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 on the dates set forth below.

O'Day Consultants
~~[NAME OF CONSULTANT]~~
By: _____
Name/Title 
Date: 5/5/10

CITY OF OCEANSIDE
By: _____
City Manager
Date: _____

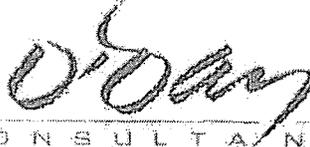
By: _____
Name/Title
Date: _____
95-3651109
Employer ID No.

APPROVED AS TO FORM:

City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

EXHIBIT "A"



CONSULTANTS

Civil Engineering • Surveying

CERTIFIED: DVBE • SBE • SDVOSB • CPUC

Promo No. 09-0287
Revised March 4, 2010
November 10, 2009
Page 1 of 4

MISSION AVENUE ENGINEERING DESIGN AND CONSTRUCTION SUPPORT

City of Oceanside

Mission Avenue Widening

Scope of Work

Scope I: Lump Sum fee of \$21,645.00 due and payable upon percentage of work completed.

Construction Documents

O'Day Consultants is proposing to conduct the following scope of services, unless otherwise noted.

- A. Prepare and submit street improvements plans to the City at 60%, 90%, and 100% complete.
- B. Field survey existing street cross-sections at 25 foot intervals for engineering design.
- C. Prepare street cross-sections to show existing street and proposed widening.
- D. Plans will show existing and proposed pavement; new curb and gutter, sidewalk, retaining wall and profiles for new curb and gutter.
- E. Prepare precise grading for the street widening.
- F. **Urban Systems Associates** will prepare striping and signage plans.
- G. Submittal will include erosion control as a separate set of plans.
- H. Prepare and submit the Urban Runoff Threat Assessment Form.
- I. Prepare and submit a Runoff Assessment Report or Storm Water Mitigation Plan as required.
- J. Prepare earthwork calculations.
- K. Prepare Retaining Wall Profile.
- L. Prepare Storm Water Pollution Prevention Plan.

Scope II: Lump Sum fee of \$10,428.00 due and payable upon percentage of work completed.

Pre-Construction and Bid Services

J.T. Krueer & Company is proposing to conduct the following scope of services.

Budget Estimates

O'Day

Promo No. 09-0287
Revised March 4, 2010
November 10, 2009
Page 2 of 4

- A. Prepare budget estimates for the improvements at the south side of Mission Avenue, west of Valley Heights Rd. This includes grading, walls, curb, gutter, sidewalk, pedestrian ramps, street pavement, miscellaneous relocations, and other appurtenant work as may be illustrated on the Plans to be prepared by our project personnel.

Solicitation, Purchasing & Contract Documents

- A. Prepare specialized Bid Documents for the Bid Events listed below. The Bid Solicitation shall include all work required to complete the scope on a Turn-Key Basis, excluding unforeseen conditions. Bidding procedures and documents shall comply with the City of Oceanside policies and practices (prevailing wage).
- B. Solicit proposals per the City of Oceanside requirements, respond to requests for information, conduct a Pre-Bid Meeting with all interested Parties and present the Bid Results on a Spreadsheet in a Comparative Format.
- C. Prepare and provide a "Scope of Work Addendum" to use with the Standard Contract Documents from the City of Oceanside.

Scope III: Lump Sum fee of \$3,889.00 due and payable upon percentage of work completed.

Construction Surveying

O'Day Consultants is proposing to conduct the following scope of services.

Field survey and office support to set one set of stakes for the construction of the following:

- A. Survey control network
- B. Mission Avenue right-of-way
- C. Clearing and demolition limits
- D. Slope stakes at 50 foot intervals
- E. Retaining walls
- F. Curb and Gutter
- G. Driveway

O'Day

Promo No. 09-0287
Revised March 4, 2010
November 10, 2009
Page 3 of 4

Scope IV: Lump Sum fee of \$968.00 due and payable upon percentage of work completed.

Additional staking

O'Day Consultants is proposing to conduct 8 hours of the following scope of services.

A. Field survey and office support for re-staking or additional stakes as required

Scope V: Lump Sum fee of \$978.00 due and payable upon percentage of work completed.

Construction Consultation Services

O'Day Consultants is proposing to conduct 6 hours of consultation for the following scope of services.

A. Provide engineering support during the bid process.

Scope VI: Lump Sum fee of \$1,660.00 due and payable upon percentage of work completed.

As-Builts

O'Day Consultants is proposing to conduct the following scope of services.

- A. Field visit to verify "as-built" conditions.
- B. Prepare redlined "as-builts" for city review.
- C. Modify existing mylars to show "as-builts" conditions.

Scope VII: Lump Sum fee of \$1,200.00 due and payable upon percentage of work completed.

A. Reimbursable expenses/reproduction costs/data transfers.

Project schedule: O'Day Consultants will meet the City's schedule expectations with the understanding that the two months allocated from the beginning of design to the end of design does not mean approved plans, specifications and estimate.

The field survey portion of this scope is non-prevailing wage.

W. D. Day

Promo No. 09-0287
Revised March 4, 2010
November 10, 2009
Page 4 of 4

Does not include:

- Agency fees
- Boundary survey
- Certificate of compliance
- Construction Management
- Corner Record
- Drainage study
- Dry utility design and consultation
- Environmental documentation
- Final survey monumentation
- Geotechnical engineering
- Inspections
- Landscape and irrigation plans
- Lot line adjustment
- Centerline monumentation
- Plats and legal descriptions
- Potholing
- Record of survey
- Right of way engineering
- Sewer analysis & design
- Specifications
- Storm Water Mitigation Plan
- Structural engineering
- Subdivision mapping
- Title documents
- Traffic control plan
- Traffic engineering
- Traffic signal design
- Water analysis & design

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

On May 5, 2010 before me, Lupe Ortega, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Patrick N. O'Day
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 Lupe Ortega
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: _____

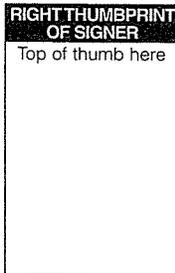
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

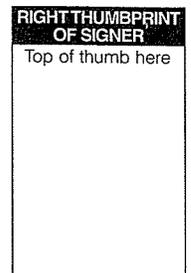
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



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: _____