

STAFF REPORT



ITEM NO. 16
CITY OF OCEANSIDE

DATE: September 22, 2010

TO: Honorable Mayor and City Councilmembers
Honorable President and Members of the Board of Directors

FROM: Development Services Department

SUBJECT: **AWARD OF CONTRACT FOR THE HARBOR AQUATICS CENTER PROJECT; PROFESSIONAL SERVICES AGREEMENTS WITH SAFDIE RABINES ARCHITECTS, INC., AND ARCADIS-US, INC., FOR CONSTRUCTION SUPPORT AND CONSTRUCTION MANGEMENT SERVICES; AND APPROVAL OF A BUDGET APPROPRIATION FOR THE HARBOR AQUATICS CENTER PROJECT**

SYNOPSIS

Staff recommends that the City Council award a contract in the amount of \$3,530,249 to SMC Construction Company of Irvine for the Harbor Aquatics Center located at 1301 North Pacific Street, and authorize the City Manager to execute the agreement upon receipt of all supporting documents; approve a professional services agreement with Safdie Rabines Architects, Inc., of San Diego, in the amount of \$119,610 for architectural support services for the project and a professional services agreement with ARCADIS-US, Inc., of San Diego, in the amount of \$199,877 for construction management, inspection and special testing services for the project; and authorize the City Manager to execute the agreements; and approve a budget appropriation in the amount of \$545,000 from Harbor District funds to the Harbor Aquatics Center project account.

BACKGROUND

On December 2, 2009, the Harbor Board adopted a resolution approving the Development Plan (D09-00005) and Regular Coastal Permit (RC-2-09) for the construction of the Harbor Aquatics Center and replacement of Harbor Lot 11B public restroom building. The Regular Coastal Permit was not appealed and became effective 30 days after approval.

On May 26, 2010, the City Council approved plans and specifications and authorized the City Engineer to call for bids. During the bid period a pre-qualification process was conducted to qualify contractors due to unique architectural components and construction methods. Six contractors were determined qualified to bid on the project. On August 10, 2010, the bids were publicly opened. Three bids were received and are summarized in Attachment A. The lowest responsible bidder is SMC Construction

Company of Irvine with a bid of \$3,530,249. The successful bidder's credentials have been researched and found to meet City requirements. The contract documents are on file in the Capital Improvements Division of the Development Services Department.

ANALYSIS

The Harbor Aquatics Center site is located on the vacant one-acre lot between the boat launch ramps and the Marina del Mar condominiums. The lot is presently used by the Oceanside Harbor and Beaches Division for open storage of beach cleaning vehicles, trash dumpsters and bulk materials. Local recreation groups use part of the site for drop-off, assembly and storage of outrigger canoes.

The purpose of the Harbor Aquatics Center is to serve the recreation needs of the community. The first floor of the community center building will be primarily used for storage and rigging of outrigger canoes, a popular recreation activity in Oceanside which, due to lack of storage facilities and transporting difficulties associated with the outrigger canoes, is currently very limited at Oceanside Harbor. The second story will serve community room functions for use by the general public for meetings and special public events. The community room may also be reserved by individuals and groups for private functions such as wedding receptions.

A separate storage building between the community center structure and the Marina del Mar Condominiums will be open only to Harbor and Beaches Division employees. The storage building will enclose the present open-air storage use on the lot and protect Harbor and Beaches Division equipment from exposure to the weather.

More specifically the Harbor Aquatics Center project is comprised of a 6,771-square-foot, two-story community center building, a separate freestanding 5,778-square-foot maintenance facility, on-site parking for 33 vehicles, and landscaping improvements. The community center structure includes 1,363 square feet of meeting room and special event space, 1,145 square feet of office and restroom space, 2,513 square feet of outrigger canoe storage space and a 1,750-square-foot balcony.

Construction is anticipated to begin November 2010 and will finish November 2011.

FISCAL IMPACT

The FY 2010-11 Capital Improvement Program (CIP) budget for the Harbor Aquatics Center has an approximate balance of \$3,745,681 (910543700751). The construction contract of \$3,530,249 with SMC Construction, Inc., plus contingency, water and sewer buy-in fees, construction support, inspection, testing and administration costs will result in a total construction project cost of \$4,286,028. Therefore, an appropriation from the unallocated Harbor District fund in the amount of \$545,000 is needed. There is a total of \$4,710,516 available in the unallocated Harbor District fund.

The project costs are estimated as follows:

Harbor Aquatics Center

Construction	\$3,530,249
Construction Contingency	\$310,000
Water and Sewer Buy-in Fees	\$84,292
Consultant Construction Management, Inspection, and Testing	\$199,877
Architectural Support Services	\$119,610
City Administration Services	\$42,000
Total	\$4,286,028

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

The Harbor and Beaches Advisory Committee reviewed and concurred with the project on September 28, 2006.

CITY ATTORNEY'S ANALYSIS

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

Attachment "A"

Bidder	Address	Bid Amount
SMC Construction Co.	Irvine	\$3,530,249
Good & Roberts, Inc.	Vista	\$3,699,000
Cox Construction Co.	Vista	\$3,740,000

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: Harbor Aquatics Center (910543700751) Project

THIS AGREEMENT, dated September 22, 2010 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and SAFDIE RABINES ARCHITECTS, INC., 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 construction support services for the Harbor Aquatics Center, as detailed in Exhibit "A", Scope of Services.
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

Harbor Aquatics Center (910543700751) Project

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
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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.

Harbor Aquatics Center (910543700751) Project

- 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, 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

Harbor Aquatics Center (910543700751) Project

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, 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.

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 \$119,610.00.

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 results 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 as determined by the project specifications and construction contract.
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.

The CONSULTANT shall be responsible for complying with all local, state, and

Harbor Aquatics Center (910543700751) Project

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.

SAFDIE RABINES ARCHITECTS, INC.

CITY OF OCEANSIDE

By: 
Taal Safdie, Principle

By: _____
City Manager

Date: Aug 19 '10

Date: _____

By: _____
Name/Title

APPROVED AS TO FORM:

Date: _____


City Attorney

68-0493520
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Diego

On August 31, 2010 before me, Shirley Ann Stallings
(Here insert name and title of the officer)

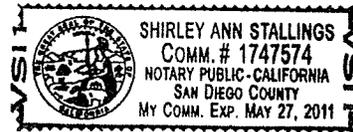
personally appeared Teal Safdie

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.

Shirley Ann Stallings
Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(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

EXHIBIT "A"

August 12, 2010

Nathan Mertz
Parks Development Manager
Engineering Division
City of Oceanside
300 N. Coast Highway
Oceanside, CA 92054

Hi Nathan,

Below are the fees associated with Construction Administration Services and Record Documents. See attached spreadsheet for a breakdown of fees.

A. Community Center and Storage Facility Construction Administration and Record Drawings

1. \$102,250.00

a. Architectural Services:

- i. Provide Construction Administration services, including meeting participation, for an average of 1.75 h/day for 260 days not to exceed 455 hours.

b. Civil Services:

- i. Review and respond to submittals and RFI's during construction.
- ii. Site visits (up to five) during construction.
- iii. One site visit for civil punch list.
- iv. One site visit to review contractor provided as-built red-lines.
- v. Prepare as-built drawings per contractor provided red-lines.
- vi. Provide hardcopy of as-built drawings to the City of Oceanside for review.
- vii. Revise City of Oceanside mylars with approved as-built changes.
- viii. Task C of the original contract will be voided when this additional services contract is approved.

c. Landscape Services:

- i. Clarifications, RFI and ASI
- ii. Planting and irrigation submittal review
- iii. Observation reports (1 for each observation visit listed below). Notification: while observing construction at the site, Consultant will keep the Client informed of the progress of construction through written Site Observation Notes. Consultant may recommend to the Client the rejection of work failing to conform to the Construction Drawings and Specifications. Consultant will advise and assist the Client with change order issues only upon Client's request.
- iv. Consultant will make visits to the site, as stipulated below to familiarize ourselves with the progress and quality of construction of the work within the Consultant's scope-of-work and to determine in general if the construction is proceeding in general accordance with the design intent and construction documents.
- v. Hardscape up to 3 site observation reviews including:
 - Concrete mock-up review
 - Concrete flatwork review
 - Concrete site walls review
- vi. Planting up to 4 site observation reviews including:
 - Broken rock mock-up
 - Soil preparation and fine grading
 - Tree layout / installation
 - Shrub, succulent and ground cover installation
- vii. Irrigation up to 3 site observation reviews
 - Pressure test of irrigation main line and mainline layout

- Drip line layout
- Coverage test of irrigation system
- viii. Substantial completion punch list and punch list completion for hardscape, planting and irrigation (prior to plant maintenance period). Allow 2 visits.
- d. Structural Services:
 - i. Construction administration is assumed to include review of pertinent shop drawing submittals and response to contractor generated requests for information.
 - ii. Prepare Record Drawings
- e. MEP Services:
 - i. Confer with Architect, Owner, Contractors, and other Consultants to interpret construction documents to resolve any construction problems/issues during construction.
 - ii. Review shop drawings, manufacturers' prints, submittals furnished by the contractor as required by the construction documents
 - iii. Prepare information for bulletins, RFI's and change orders, as required
 - iv. Review Contractor's As-Built Drawings
 - v. Developing record drawings from Contractor's As-Build Drawings
 - vi. Conduct one (1) field visit at the end of construction and prepare a punch list for the Contractor per Salehi Engineering, Inc observations.

B. Community Center and Storage Facility Survey Work

1. \$6,065.00
 - a. One (1) site visit for Field Surveying Services to establish two (2) site benchmarks, two (2) horizontal control points, for use during construction, and eight (8) building envelope corner construction stakes, placed at an appropriate offsets for building pad and building construction.
 - b. One (1) site visit for field surveying services to perform a pad certification survey and office surveying services to prepare a pad certification letter verifying the grading to be within construction tolerance.
 - c. One (1) site visit for Field surveying services to set property corner monuments along the exterior boundary line of the Aquatics Center Project.
 - d. File a Record of Survey with the County of San Diego Land Surveyor, depicting the establishment of the exterior boundary line and property corner monuments.

C. Community Center and Storage Facility Geotechnical Work

- a. \$9,535
 - Site Grading Operations: We anticipate that site grading will primarily consist of the removal and recompaction of the potentially compressible onsite soils to attain finished design grades for the two structures (community center and storage facility) and associated improvements. Our anticipated scope of services during grading will generally include the following:
 - Field observation by a representative of our firm to check that earthwork is performed in accordance with the recommendations included in the referenced geotechnical investigation report for the project. Our field technician will observe removal limits and placement and compaction of fill soils.
 - Field density testing of compacted fill soils placed during grading.
 - Laboratory testing of selected samples of the fill soils to evaluate their maximum dry density/optimum moisture content values.
 - Geotechnical consultations, including attendance at onsite meetings (including pre-grading meeting, if needed).

- Preparation of a report summarizing our geotechnical observations and presenting the results of our field and laboratory tests. The report will include a drawing indicating the approximate locations of field density tests. Three copies of the report will be provided to you for submittal to the appropriate regulatory agency.
- Foundation Excavation Observation: We understand that the two proposed structures will be founded on thickened mat foundation/slab systems. Our anticipated scope of services during excavation of the foundation systems will include the following:
 - Geotechnical observation of the foundation excavations to check that footings extend to the proper depth and bearing soils and the observed soil conditions are generally similar to those assumed in the referenced project geotechnical report. One-page reports summarizing our observations will be prepared at the site and copies left with your designated representative. Please note that we do not test or inspect rebar or concrete forming.
- Construction of Underground Utilities: We understand that the proposed construction may include underground utilities at the site. Underground utilities may include water, sewer, joint dry utilities and drain lines. Our anticipated scope of services during construction of underground utilities may include the following:
 - As-needed field observation and field density testing of the underground utility trench backfill operations by representatives of our firm to check that backfill is performed in accordance with the recommendations included in the referenced geotechnical report for the project.
 - Laboratory testing of selected samples of the backfill soils to evaluate their maximum dry density/optimum moisture content values, if needed.
 - Geotechnical consultations, including attendance at onsite meetings, if needed.
 - Preparation of a report summarizing our observations and presenting the results of our field and laboratory tests. Three copies of the report will be provided to you for submittal to the appropriate regulatory agency.
- Construction of Surface Pavements: Our anticipated scope of services during construction of the project's paved areas will include the following:
 - As-needed field observation and field density testing during preparation and compaction of the subgrade soils and during placement and compaction of aggregate base.
 - Laboratory testing of a representative sample of the aggregate base to evaluate its maximum dry density/optimum moisture content values, if needed.
 - Preparation of a field report summarizing our geotechnical observations and field density test results for the pavement areas. Two copies of the report will be provided to you for submittal to the appropriate regulatory agencies.
- Cost Estimate: The cost for our above-outlined scope of services will accrue on a time-and-materials basis in accordance with our attached Schedule of Professional Fees. Based on our previous experience, we have found that the amount of time and effort (reflected in our fee) required by us to provide geotechnical services on site development projects are primarily dependent on the contractor's schedule and chosen construction methods. It is difficult for us to predict with certainty the amount of time and effort that we may be required. The total estimated cost for our anticipated geotechnical observation and testing services is \$9,535. However, the actual time of grading and construction activities on the project may vary from the assumed time intervals. Therefore, our actual fee may be modified from the estimated costs based on the actual time of construction.

D. AB-1881 Irrigation Requirements

1. \$1,760.00

- a. AB 1881 Irrigation Requirements, AB 1881 Planting Requirements, AB 1881 Certificate of Completion and one additional site visit.

E. Total: \$119,610.00

Thank you for your consideration of our request and please let us know if there are any questions.

Susan Richard

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: Harbor Aquatics Center (910543700751) Project

THIS AGREEMENT, dated September 22, 2010 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and ARCADIS-U.S., INC., 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 construction management, inspection and special inspection support services for the Harbor Aquatics Center, as detailed in Exhibit "A", "B" and "C", Scope of Services.
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.
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Harbor Aquatics Center (910543700751) Project

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(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

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General limit per occurrence	\$ 1,000,000
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<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.

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- 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 three (3) 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, 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

Harbor Aquatics Center (910543700751) Project

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, 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.

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 \$199,877.00.

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 results 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 as determined by the project specifications and construction contract.

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.

The CONSULTANT shall be responsible for complying with all local, state, and

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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.

ARCADIS-U.S., INC.
By: *W. D. [Signature]*
Name/Title Vice President

CITY OF OCEANSIDE
By: _____
City Manager

Date: 8/31/2010

Date: _____

By: _____
Name/Title

APPROVED AS TO FORM:
[Signature]
City Attorney

Date: _____

Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

On August 31, 2010 before me, Susan E. Ready, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Mark Claussen
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 Susan E. Ready
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: _____

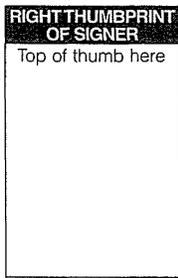
Signer(s) Other Than Named Above: _____

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: _____

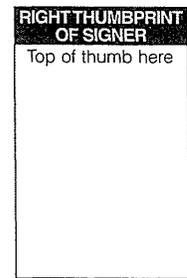


EXHIBIT A
GENERAL SCOPE OF SERVICES

1. SERVICES TO BE PERFORMED

ARCADIS shall perform the professional Consulting Services required under this Agreement in accordance with standard of care, skill, training, diligence and judgment normally provided by competent professionals who perform work of a similar nature, in the same geographical regions as the work described in this Agreement and any Work Authorization. No other warranty or guarantee is expressed or implied, and no other provision of this Agreement will impose any liability upon ARCADIS in excess of this standard of care.

Services performed under this Agreement may be more fully described in specific detail in individual Work Authorizations approved by the Client.

ARCADIS shall have no obligation to commence the Services as stipulated in this Agreement and/or any associated Work Authorization until both this Agreement and the applicable Work Authorization are fully executed and delivered to ARCADIS. Any schedule requirements applicable to ARCADIS Services will be set forth in this Exhibit or Work Authorization.

ARCADIS agrees to correct, at its own expense, any Service provided under this Agreement that does not conform to the standard of care herein for a period of one (1) year following the completion of that Service.

2. DESCRIPTION OF GENERAL SERVICES

City of Oceanside Harbor Aquatics Center

Construction Management

1. Conduct a thorough review of the Plans and Specifications to identify ambiguities, conflicting or incomplete information, insufficient level of detail, etc., that may cause difficulties for the Contractor in constructing the project.
2. Prepare and distribute meeting agendas and minutes. Conduct meetings and record meeting minutes for the pre-construction conference, pre-installation conferences, project close-out meetings and weekly progress meetings as required by the specifications, as well as additional meetings that may be required by the City.
3. Receive, log and review for completeness the Contractor's required submittals. Forward submittals and samples to City representative or Architect for confirmation of compliance. Maintain a submittals log using Meridian Systems Prolog Manager or equal software.
4. Receive and log RFI's and review content and completeness. Forward RFI's to the Architect or City Project Manager for clarification, interpretation and response. Transmit all RFI responses back to the Contractor. Monitor overdue RFI's.
5. Negotiate contract change orders. Review content and cost of proposed change orders with Contractor and City Project Manager. Prepare change order documentation for execution by Contractor and City. Prepare and maintain a change order log listing those approved with a brief description of the change order work and the cost.
6. Review the Contractor's periodically-revised construction schedule to verify that it complies with requirements of Construction Documents and that it establishes completion dates that comply with the Contractor's master schedule. If the construction schedule does not comply, inform City Project Manager and suggest corrective measures.

Harbor Aquatics Center (910543700751)

7. Review payment invoices or claims submitted by the Contractor and confirm that the amount requested reflects the progress to-date. Make appropriate adjustments to each payment invoice/claim and prepare progress payment requests.
8. Facilitate the document flow among the City, Contractor and Architect by preparing and tracking the resolution and disposition of Requests for Information, proposed Change Orders, Correction Notices, Submittals, and Architect-or City-initiated changes. Use Meridian Systems Prolog Manager or equal software system. Provide monthly copies of key project documentation.
9. Coordinate technical inspection, testing and survey services provided by others and obtain a copy of all inspection and testing reports on the day the inspection or test is performed. Be available to meet with and discuss construction progress with City staff and Harbor and Beaches Department representatives.
10. Provide site observation services to verify that construction work complies with the Plans and Specifications, including the approved SWPP. Produce daily reports of Contractor's activities, equipment and personnel on the job. Prepare and maintain a Non-Compliance Notice Log. Identify actual and potential problems associated with the project and consult with the City Project Manager.
11. Maintain an awareness of health and safety requirements and enforce applicable regulations and contract provisions for protection of the public and project personnel.
12. Monitor the preparation of record documents by the Contractor as specified. Review and assist with record drawings and specifications to ensure they accurately depict the completed project.
13. Take photographs of the project site and construction activities, and maintain a record of these photographs. Transmit them to the City.
14. Assist the Contractor and City Project Manager in creating and monitoring the list of items to be completed or corrected (punch list), prior to final completion. Monitor closeout procedures for final completion and payment, as per Specification Section 01770.
15. Prepare a monthly progress report for the City Project • Manager describing key issues, cost status, and schedule status.
16. Finalize alternate bid items, claims, change orders, punch list items, closeout submittals, O & M Manuals and corrected submittals. Transmit all project files and record documents to the City for archiving.

Special Inspection and Materials Testing

1. Coordinate meetings to review, monitor and supervise the Quality Assurance Program and all assigned personnel. Ensure program compliance with applicable jurisdictional mandates void of conflicts-of-interests. Receive direction and implement the needs of the owner or assigned owners representative, as required.
2. Ensure prompt and accurate reporting of testing and inspection results. Create/Maintain Q. A. logs.
3. Assist in responding to field problem/issues and attend meetings when requested.
4. Ensure that CQAG's Q. A. field team functions as overall part of the construction team.
5. Report directly to Project Manager all matters concerning the implementation and status of the Quality Assurance Management Program. Report directly to assigned owners representatives, as required.

6. Assist in ensuring that all testing and inspections required by the authority having jurisdiction are performed and documented.
7. Assist with project closeout and punch listing along with ensuring as-built completeness, as required.
8. Assist in coordinating required laboratory and A & E services regarding testing, inspections and observations.

Scope of Services for Special Inspection and Materials Testing

- Reinforcing steel, periodic – during placement of steel and before placement of concrete.
 - Reinforced concrete, continuous – during the placement and sampling of concrete as required.
 - All structural field welding and field welding of reinforcing steel, periodic on welds not greater than 5/16-inch – (We have assumed that an approved fabricator will be utilized and therefore special inspection of shop welding will not be required.)
 - High strength bolting, periodic – verify faying surfaces and a snug tight fit and/or proper torque as required.
 - Ultrasonic testing of full and partial penetration welds.
 - Drilled and/or epoxy adhesive anchors – during installation of anchors.
 - Fireproofing – periodic inspection of application and thickness and density tests.
 - Built-Up Asphalt Roofing – Flood Test.
 - Cement Concrete Pavement – slump, air content, concrete temperature and compression tests.
9. Provide daily inspection reports describing the work inspected and stating compliance or non-compliance with the project documents. A copy of the daily report will be left with the on-site superintendent. Reports will be reviewed by SCS&T's project engineer, a Registered Civil Engineer, and will be distributed to the designated recipients.
 10. Fabricate, transport and test concrete for slump, temperature and compressive strength at the rate of one set of three concrete test cylinders per 150 cubic yards, 5,000 square-feet or for each day's placement. One cylinder will be tested at seven days and two at 28 days. Test reports shall be prepared and distributed to the designated persons. Suspect or failing test results will be reported to the designated person(s) on the day of the test.
 11. Provide supervision of our project personnel by our project engineer, a Registered Civil Engineer. The project engineer will review all special inspection reports and test results, attend site meetings as requested, and review all billing. Additionally, the project manager will act as a point of contact and will be available to answer questions that may arise.

ACTUAL COST PLUS FIXED FEE ESTIMATED AMOUNT

Actual Cost Construction Management Harbor Aquatic Center	\$148,200
Actual Cost Materials Testing/Special Inspection Harbor Aquatic Center	\$42,159
Total	\$190,359
Fixed Fee	\$9,518
Total Actual Cost Plus Fixed Fee	\$199,877

SCHEDULE OF RATES

Below is a list of the positions and associated hourly billing rates for additional services if requested by City of Oceanside. Additional rates for other professionals and professional services such as scheduling, estimating, constructability review, value engineering, etc. can be provided by ARCADIS on an as-needed basis.

Construction Manager	\$138
Quality Assurance/Construction Observation	\$93
Document Control	\$50

**EXHIBIT B
PAYMENT TERMS**

1. PAYMENT OF SERVICES

Client agrees to pay for the Services performed by ARCADIS in accordance with this Agreement and any approved Work Authorization. Payment for Services is set forth and shall be subject to the ARCADIS standard invoicing practices, which are incorporated herein. Payment Terms shall specify any required Mobilization Fee or other Retainer, Lump Sum Fees, Hourly Billing Rates, and Reimbursable Expenses, and provide for interest on payments not timely made, and for the suspension of work in the event that payments are not made by the Client.

2. PAYMENT TERMS

ARCADIS shall invoice the Client for Services in accordance with ARCADIS standard invoicing practices. Invoices should be remitted by check or wire transfer of immediately available funds as follows:

WELLS FARGO BANK NA

**Lockbox: ARCADIS U.S., Inc., Dept 547,
Denver, Colorado 80291-0547.**

**By Wire: ABA 121000248, Account No.
1018164751, ARCADIS U.S., Inc. Lockbox.**

**By ACH: ABA 102000076, Account No.
1018164751, ARCADIS U.S., Inc. Lockbox.**

Payment shall be due no later than 30 days after the date of receipt of the invoice.

If Client reasonably objects to any portion of an invoice, the Client shall provide written notification to ARCADIS of Client's objection and the basis for such objection within fifteen (15) days of the date of receipt of the invoice, and the Parties immediately shall make every effort to settle the *disputed* portion of the invoice. The *undisputed* portion shall be paid immediately and Client shall not offset amounts due ARCADIS under a Work Authorization for any credit

or disputes arising under a different Work Authorization. If payment of *undisputed* invoices by Client is not maintained on a current basis, ARCADIS may, after giving seven (7) days' written notice to Client, suspend further performance until such payment is restored to a current basis. All suspensions shall extend the time for performance by a length of time equal to the duration of the suspension, and ARCADIS shall be paid for Services performed and charges incurred prior to the suspension date.

EXHIBIT C
SPECIAL TERMS AND CONDITIONS
FOR PROJECT MANAGEMENT SERVICES

1. SCOPE OF SERVICES

In performing the Work under this agreement, it is understood that ARCADIS, will be the Owner's Representative, and ARCADIS assumes no responsibility for the design or construction of the project and that all such responsibility remains with the Client, Architect and the Contractor for the Project. As part of the Work, ARCADIS may provide Client with recommendations and summaries, but all final decisions as to design, construction, or scope of services which are determined by the Architect or Engineer to be the responsibility of the Client shall be timely made by the Client.

ARCADIS shall keep client informed of the work progress and as appropriate, preliminary findings and recommendations. The Contractor shall remain responsible for its progress of the work. ARCADIS will not be responsible for any delays caused by the Architect or Engineer's work or progress of the Contractor.

Client shall provide ARCADIS with information relating to the Project that are necessary or ARCADIS to provide the Services and Work herein.

ARCADIS will identify the roles and responsibilities of each Project member, establish communications protocols to provide timely information and accountability.

ARCADIS will designate Project personnel for authority and accountability for the Project communications.

Client has contracted with an Architect or Engineer for various professional services. In the event of a design error or omission or other such claim arising or related thereto, the Client agrees that such risk shall not be borne by ARCADIS, and ARCADIS shall not be responsible for any such claims.

Estimates of costs are made in ARCADIS best judgment. The Client recognizes that actual costs may vary depending upon many factors, and

therefore understands that any estimate is not a guarantee of actual costs that may be incurred by the Client.

The Contractor is responsible for all of the means, methods and sequencing of the work. No review by ARCADIS on the Project shall relieve the Contractor from full performance of the construction work. In the event of a construction defect or other such claim arising or related thereto, the Client agrees that such risk shall not be borne by ARCADIS, and ARCADIS shall not be responsible for any such claims.

2. JOB-SITE SAFETY

Neither the professional services or other activities of the ARCADIS herein, nor the presence of the ARCADIS or its employees and subconsultants at a construction/project site, shall relieve the Contractor of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. ARCADIS and its personnel have no authority to exercise any control over any construction contractor or their employees in connection with their work or any health or safety precautions. The Client agrees that the Contractor is solely responsible for jobsite safety, and warrants that this intent shall be carried out in the Client's agreement with the General Contractor.