



DATE: January 4, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **AMENDMENT 3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH THE IBI GROUP TO RE-CIRCULATE THE DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT REPORT (PEIR) TO COMPLETE THE CIRCULATION ELEMENT UPDATE**

**SYNOPSIS**

Staff recommends that the City Council approve Amendment 3 in the amount of \$124,893 to the professional services agreement with The IBI Group to re-circulate the draft Programmatic Environmental Impact Report (PEIR) to complete the Circulation Element Update, and authorize the City Manager to execute the Amendment; and approve a transfer of \$100,000 from the Thoroughfare Fund 561.

**BACKGROUND**

In August 2005, the City Council approved a professional services agreement with IBI Group to update the City's Circulation Element, which assumed completion of a Negative Declaration as the appropriate environmental document. During the initial scoping process and community meetings, it was determined that additional environmental clearance would be needed through an Environmental Impact Report process and not through a Negative Declaration.

A revised scope of work, including a Programmatic Environmental Impact Report (PEIR) and a revision to the traffic analysis using the SANDAG Series 11 transportation model, was approved as Amendment 1 by City Council in August 2007. Amendment 2, which included additional transportation alternatives, was approved by City Council in August 2009.

**ANALYSIS**

The Circulation Element draft Programmatic Environmental Impact Report (PEIR) was released for public review and comments in July 2011; the efforts to complete the PEIR extended beyond the original scope of work and included several stages of review and revision before the PEIR was released for public review.



Several report revisions have been completed based upon new case law requiring the use of existing conditions as the baseline scenario and new potential wildlife impacts. As such, revisions to existing conditions, updates to the transportation scenarios and wildlife impacts are necessary. These efforts along with the a total of 395 public comments received on the draft PEIR have expended the available project budget and resulted in an expansion of the scope and project timelines.

In addition, the original scope for the environmental work only called for the review of two project alternatives at a detailed level. However, the traffic study for the Circulation Element Update includes three alternatives at an equally detailed level that was also expected to be included in the draft PEIR. This was done at the City's direction to provide an appropriate level of analysis and range of network alternatives for the City Council's consideration.

Given the length of time and numerous changes to the traffic study and draft PEIR, much of the budget previously approved was utilized to keep the project moving forward.

In order to finalize the Circulation Element Update, given the necessary revisions and re-circulation of the draft PEIR, refinement to the scope of work and revisions to the project budget are needed. A detailed amendment to the scope of work, projected approval schedule, and project budget are attached as Exhibit 1. Amendment 3 is also attached as Exhibit 2.

## **FISCAL**

The unassigned fund balance in the Major Thoroughfare Fund 561 (561.3100.0001) is \$4,921,575. Therefore, sufficient funds are available to appropriate \$100,000 to the Citywide Transportation Circulation Update (901562200561.5305.10100).

The Citywide Transportation Circulation Element Update project received \$100,000 in funding for FY 11-12 to support the remainder of the existing contract with The IBI Group to update the City's Circulation Element. The total project cost previously approved is \$565,778. The current request for Amendment #3 is \$124,893, which would bring the total project cost to-date to \$690,671. The transfer of the \$100,000 from the Major Thoroughfare Fund 561 is required to fund Amendment 3 to the existing PSA to re-circulate the draft PEIR. Once the transfer has been made, there will be sufficient funds available to complete the project.

Citywide Transportation Circulation Update:

FY 11-12 Funding

Professional Services	\$100,000
Transfer from Fund 561	<u>\$100,000</u>
Total Available Funding	\$200,000

FY 11-12 Expenditures:

YTD Expenditures	\$21,770
Outstanding Encumbrances	\$18,762
Amendment # 3	\$125,000
Contingency	<u>\$34,468</u>
Total Projected Expenditures	\$200,000

**INSURANCE REQUIREMENTS**

The City's standard insurance requirements have been and will continue to be met.

**COMMISSION OR COMMITTEE REPORT**

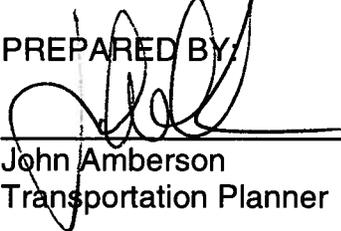
Does not apply.

**CITY ATTORNEY'S ANALYSIS**

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

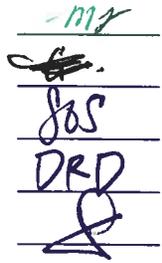
**RECOMMENDATION**

Staff recommends that the City Council approve Amendment 3 in the amount of \$124,893 to the professional services agreement with The IBI Group to re-circulate the draft Programmatic Environmental Impact Report (PEIR) to complete the Circulation Element Update, and authorize the City Manager to execute the Amendment; and approve a transfer of \$100,000 from the Thoroughfare Fund 561.

PREPARED BY:  
  
\_\_\_\_\_  
John Amberson  
Transportation Planner

SUBMITTED BY:  
  
\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:  
  
Michelle Skaggs Lawrence, Deputy City Manager  
George Buell, Development Services Director  
Scott O. Smith, City Engineer  
David DiPierro City Traffic Engineer  
Teri Ferro, Financial Services Director



**Attachments:**

- 1. Exhibit 1-Scope of Work
- 2. Exhibit 2-PSA



**IBI Group**  
701 B Street—Suite 1810  
San Diego CA 92101 USA  
tel 619 234 4110  
fax 619 234 4109

November 21, 2011

Mr. John Amberson  
Project Manager  
City of Oceanside  
300 North Coast Highway  
Oceanside, CA 92054

Dear Mr. Amberson:

**OCEANSIDE CIRCULATION ELEMENT UPDATE SCOPE OF WORK AMENDMENT**

The Circulation Element Project Team has been working to update the Oceanside Circulation Element which was recently released for public review in July 2011. The public release included the draft Program Environmental Impact Report (PEIR) with associated technical appendices, the final Traffic Impact Study (TIS), and the draft Circulation Element update. The efforts to complete these documents extended beyond the original scope of work and included several stages of review and revision before they were released in July 2011 for public review. In addition, there were numerous changes made to the Final TIS (which is a major component of the PEIR) which resulted in an extension of the timeline to complete the Draft PEIR. This in turn resulted in several modifications to the Draft PEIR.

Several of the report revisions were based on: new emerging information; changes to existing conditions; or update to the future baseline scenario that occurred during the various stages of the project that were beyond our control or the control of the City. These efforts along with the extensive number of comments received on the Draft PEIR have expended the available project budget and resulted in an expansion of the scope and project timelines. The traffic analysis efforts have been extended to include additional intersections and segments beyond the original scope of work or any of the subsequent amendments. City staff provided seven rounds of comments and revisions to the TIS. These revisions included things such as adding additional roadway segments, modifying the existing or future geometry for intersections, and modifying the mitigations measures based on new information made available. These revisions to the TIS were mainly due to the longevity of the project and therefore existing conditions requiring updates, additional local projects moving forward with various mitigation measures that needed to be incorporated into the Circulation Element TIS, and various decisions made by the City. As these changes emerged, it caused a ripple effect of changes to the Draft PEIR and the Draft Circulation Element report.

In addition, BRG's original scope of work only called for the review of two project alternatives at a detailed level. However, the TIS reviewed three alternatives at an equally detailed level which was also expected to be included in the Draft PEIR. This was done at City direction to

Mr. John Amberson – November 21, 2011

provide an appropriate level of analysis and range of network alternatives for City Council's consideration. Therefore, BRG ensured that the Draft PEIR included the Modified 1995 CE, Alternative 1, and Alternative 2 all at the same level of detail. Also at the request of the City, there was one additional public scoping meeting beyond the original scope held to solicit input from the public on the scope and content of the EIR. This additional effort resulted in BRG to expend much of their budget on completing a Draft PEIR that analyzed three alternatives at an equal level which left little to no budget to complete the remaining tasks.

Given the length of time and numerous changes to the TIS and Draft PEIR, much of the time and budget previously approved was utilized to keep the project moving forward despite the work efforts being out of the original agreed upon scope of work contract. In an effort to keep the project going our Team has still continued to work on the revisions to the PEIR as well as work on the response to comments and provide overall project support and management for the City. Our Team is currently in the process of responding to comments and incorporating them into the PEIR and associated technical studies, but to finalize the update of the Circulation Element given the necessary revisions further budget and scope refinement is needed. The scope and budget below represents the efforts necessary to fully complete the project to the point of a decision by City Council. The amendment to our scope and budget includes the completion of the following tasks:

#### **CIRCULATION ELEMENT UPDATE**

##### **Task A0: Project Management and Meetings/Coordination**

The last budget amendment estimated the Circulation Element update to be completed in December 2009. Due to the extension of the timeline for this project, it has and will continue to require project management and coordination until its completion. IBI Group will continue to provide on-going support and project management until the completion of the Circulation Element update. IBI Group will attend meetings specific to the Circulation Element update with City staff in support and review of PEIR and technical appendices. Monthly coordination or conference calls (as deemed appropriate) with the City will be conducted to provide project status and updates.

##### **Task A1: Additional Response to Comments**

The City of Oceanside received 359 substantive comments on the June 20, 2011 Draft PEIR. There are 138 comments which required review and response by IBI Group. Many of these were quite detailed and complex, requiring a proportionately higher level of effort by BRG, IBI and the City to prepare appropriate responses. The high volume of comments also exacerbated the level of effort necessary to coordinate the responses with the Project Team and City staff.

The number of comments actually received by the City of Oceanside was over three times the number of comments assumed in preparation of the original budget. The typical assumption of a moderate amount of comments for a program EIR is about 120. The level of effort necessary to respond to comments on a Draft EIR and prepare the Final EIR is highly dependent on the number and nature of the comments received. The approach taken in preparing the budget for the

Mr. John Amberson – November 21, 2011

Response to Comments and Final EIR was to identify a moderate level of effort to respond to public comments, and then inform the client if that estimated level of effort is likely to be exceeded, once the actual number and complexity of public comments have been assessed.

An augmented budget is requested for preparation of the responses to an additional 240 comments on the Draft PEIR. This includes the additional time needed for BRG to review, categorize, distribute and coordinate the responses with the IBI Group and City staff. Additional production time for preparation of the comment section of the Final PEIR is included.

#### **Task A2 - Incorporation of Additional Response to Comments Revisions into Final PEIR**

The high number and complexity of the comments on the Draft PEIR required additional technical analyses and a higher than usual number of revisions to be incorporated into the PEIR document. This task includes incorporating revisions to the text and graphics in the traffic and biological resources sections of the PEIR with corresponding revisions to the supporting technical reports. The Traffic Impact Study technical report requires some of the more extensive revisions based on the comments. Revisions range from text revisions to adding additional analysis or modifying existing analysis based on recent decisions made by the City to keep the documentation current. These revisions require an additional effort by IBI Group and subsequently BRG to modify the text, tables, and figures associated with all the changes. In addition, any changes made to the TIS for Alternative 1 must also be incorporated into the supporting Circulation Element document found within the Appendix of the PEIR by IBI Group.

#### **Task A3: Sunnyvale Text Revisions**

The California Court of Appeal decision in the case of Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council requires that the impact analysis in a project specific EIR, specifically the traffic impact analysis, must evaluate project impacts against existing conditions. The court faulted the Sunnyvale EIR for evaluating the project impacts against existing plus future or cumulative projects traffic condition, and not against existing conditions only. It was not anticipated that this decision would affect program EIRs for general plan-level programs, including the City of Oceanside Circulation Element Update. The methodology for this type of transportation system analysis has not been developed.

Nevertheless, at least two of the public comment letters brought up the issue of the recent "Sunnyvale" court decision, and its relationship to the Oceanside Circulation Element PEIR. In order to respond appropriately to the comments, IBI Group and BRG reviewed and discussed that decision internally, and then met with the City of Oceanside staff where the decision and its applicability to the Oceanside Circulation Element PEIR were discussed. Subsequent to that meeting, IBI Group was directed to prepare additional tables with supporting write-up comparing traffic parameters for each alternative with existing traffic conditions. BRG reviewed those tables and provided input. It was also decided that throughout the PEIR and supporting technical reports, the name of the alternative previously called "Baseline 2030 Alternative" shall be changed to "Modified 1995 Circulation Element" or in the abbreviated form of "Mod '95 CE" for table titles where space is limited. This title change was deemed necessary to avoid confusion with the fact

Mr. John Amberson – November 21, 2011

that existing conditions are the baseline for the impact analysis throughout the PEIR. BRG will be responsible for incorporating this title change throughout the PEIR documents. IBI Group will be responsible for modifying this change throughout the Traffic Impact Study.

**Task A4: Screencheck Recirculated Draft PEIR**

BRG will prepare a cover sheet or Foreword for the Recirculated Draft PEIR explaining to the reader why the Draft PEIR is being recirculated for public review, and identifying the revised portions of the Recirculated Draft PEIR. The City Attorney should review this section before the Recirculated Draft PEIR is released for public review.

This scope of work and budget provide for preparing the content of the Recirculated Draft PEIR in a format that identifies new or revised text in the body of the document with bold or underlined characters, not in color. The title change for the Sunnyvale revisions, described in Task A3, will not be shown in any distinguishing text style because it will be clearly explained in the Foreword and noted at the beginning of relevant sections in the PEIR document.

Given the short timeframe requested by the City for this task, this scope of work and budget provide for one screencheck review of the Recirculated Draft PEIR, and then a final "print check" review of the document before it is finalized for delivery to the City by BRG. IBI Group and BRG will collaboratively work together in reviewing the document to ensure there are no inconsistencies between the chapters and the various technical reports in order to ensure that the one screencheck is sufficient and allows the project to move forward expeditiously.

**Task A5: Recirculated Draft PEIR**

The Recirculated Draft PEIR will be assembled to include all of the responses to the 359 comments on the June 20, 2011 Draft PEIR, the Draft PEIR with the revised text and graphics described under Task 2, and the Foreword. A revised cover for the new Recirculated Draft PEIR will be prepared. BRG will submit 25 documents to the City of Oceanside for their use in distributing the public review documents for the Recirculated Draft PEIR. BRG will also provide up to 25 CDs with the supporting technical reports for the City's inclusion in the 25 hard copies of the Recirculated Draft PEIR document. BRG will also provide the City with up to 100 CDs with the electronic file of the entire Recirculated Draft PEIR package.

**Task A6: Meetings and Public Hearings**

Due to the complexity and longevity of this project, the budget and scope of work intended for City Council meetings and public presentations has been expended on the additional years of project meetings held with City staff as well as to continue to conduct all the required technical analysis and begin with the response to comments on the Draft PEIR.

IBI Group and BRG will assist the City in presenting materials and PowerPoint presentations for City Council meetings and the Planning Commission as deemed appropriate by City staff. The

Mr. John Amberson – November 21, 2011

Team will attend one Planning Commission and one City Council hearing for the completion of the Circulation Element.

**Task A7: Responses to Comments on Recirculated Draft PEIR (80 New comments)**

The scope of work, schedule and budget for preparation of the Final PEIR is based on receiving up to 80 substantive new comments (i.e., requiring responses other than “comment noted.”), and assumes that no new or revised technical studies will be required based on these new comments. Comments on the Recirculated Draft PEIR will be referred to as “New” comments. BRG will be responsible for reviewing all New comments and assigning each comment to the Project Team member who is best suited to respond to the comment (i.e., BRG, IBI, City staff). BRG will also review all New comments against the 359 responses to the comments on the June 20, 2011 Draft PEIR to identify any New comments that are similar to any previous comment in order to assist the responder with ensuring that responses to New comments do not conflict with previous responses on the same issue.

BRG will be responsible for coordinating with the Project Team members assigned to responding to New comments, and will review and assemble the responses to comments for publication with the Final PEIR. In view of the short timeframe allocated for this task, this scope of work and budget provide for one screencheck review of the Responses to Comments, and then a final “print check” review of the document before it is finalized for inclusion with the Final PEIR.

**Task A9 - CEQA Findings of Fact/ Statement of Overriding Considerations**

The complexity of the Circulation Element Update alternatives and the updated requirements for CEQA Findings of Fact since the contract was approved in 2005 require an augmented budget for this task. BRG will prepare draft CEQA Findings of Fact using a format to be provided by the City of Oceanside for Alternative 1. This is the most complex alternative in terms of significant environmental impacts. Should the City Council select Alternative 2 or the Modified 1995 CE, the Findings can be easily altered for either of those alternatives.

BRG will prepare a draft of the Statement of Overriding Considerations (SOC). The SOC will require significant input from IBI and City staff in order to provide defensible evidence in the record for the SOC. Again, the level of effort for both of these tasks has significantly increased with the complexity of the alternatives analysis in the PEIR.

**Task A10 – Mitigation Monitoring and Reporting Program**

BRG will prepare the Mitigation Monitoring and Reporting Program (MMRP) using the City of Oceanside format provided by Jerry Hittleman. The MMRP will be prepared for Alternative 1 (unless otherwise directed by City Council or staff), which is the most complex alternative in terms of significant impacts and mitigation measures. Given that the PEIR and traffic analysis produced approximately 60 mitigation measures for Alternative 1, and the overall complexity of the mitigation program, the MMRP will require significantly more effort than could have been anticipated.

Mr. John Amberson – November 21, 2011

### **Task A11 - CEQA Notices - File Notice of Determination**

BRG will file the Notice of Determination with the County Clerk on behalf of the City of Oceanside at no charge. This does not include the payment of filing fees, which will be the responsibility of the City.

#### **Subconsultants and Other Direct Costs**

In addition to the changes necessary to the PEIR and Traffic Study reports, BRG's technical consultants were required to conduct additional field work and analysis in response to extensive comments from the resources agencies. This resulted in the environmental subconsultants to revise their technical reports for inclusion into the PEIR. These efforts were required as a result of new information provided by the resources agencies in their comments on the Draft PEIR.

BRG shall provide production printing of the Recirculated Draft PEIR and the Final PEIR as follows:

- Recirculated Draft PEIR 5 copies for 12/2/11 submittal for City Attorney review
- 5 copies of the Screencheck Draft
- 25 copies of the Recirculated Draft PEIR for public review
- 100 CDs with the Recirculated Draft PEIR documents
- 5 copies of the revised Final TIS with appendices (provided by IBI Group)
- 10 copies of the Draft Circulation Element document with technical appendices attached as a CD (provided by IBI Group)

#### **Final PEIR:**

- 25 copies of the Final PEIR
- 10 copies of the Final PEIR for Planning Commission
- 8 copies of the Final PEIR for City Council
- 100 CDs with the Final PEIR documents
- 5 copies of the Final TIS with appendices (provided by IBI Group – only if additional changes are made)
- 10 copies of the Final Circulation Element document with technical appendices attached as a CD (provided by IBI Group)

All copies of the PEIR will be bound with plastic comb binding. The screencheck review submittals of the responses to New comments (Task A7) shall be done electronically with no paper copies submitted.

Mr. John Amberson – November 21, 2011

## **PROPOSED SCHEDULE**

The following is the proposed schedule to complete the Final PEIR for delivery to City staff by April 12:

- |                         |   |
|-------------------------|---|
| <b>December 2, 2011</b> | BRG to deliver a Partial Screencheck Draft of the Recirculated Draft PEIR for City staff review, to include the Task A2 and A3 revisions. |
| <b>January 4, 2012</b>  | City Council approval of contract amendment.  |
| <b>January 26, 2012</b> | BRG to deliver Recirculated Draft PEIR documents to the City, as described in Task A5.  |
| <b>February 1, 2012</b> | City to publish the Recirculated Draft PEIR for 45-day public review  |
| <b>March 16, 2012</b>   | 45-day public review ends.  |
| <b>April 5, 2012</b>    | All responses to comments are returned to BRG in final form, approved for use in preparing the publication Final EIR.                     |
| <b>April 12, 2012</b>   | BRG to deliver Final PEIR, as described in Task A8.   |
| <b>April 18, 2012</b>   | BRG to deliver draft CEQA Findings of Fact/SOC and MMRP, as described under Task A9 and A10.  |

The proposed budget to complete these tasks are outlined in the detailed attachment. Should you have any questions regarding the scope of work or budget, please contact us: Director, Steve Schibuola (sschibuola@ibigroup.com) or Project Manager, Don Murphy (dmurphy@ibigroup.com) at 619-234-4110.

Sincerely,



Steve Schibuola, Director and Principal-in-Charge  
IBI Group



Circulation Element Update Amendment - COST ESTIMATE

November 2011

PROJECT COMPONENTS	IBI Group										BRG Consulting, Inc.				Total Task Hours	Total Task Costs	
	Schubholz, Principal	D. Murphy, Project	T. Fasola, Lead Planner	C. Resik, Trans. Engineer	Graphics	Admin Support	Principal	Project Manager	Enviro. Analyst III	Graphics/CADD	Word Processor	IBI Labor Costs	IBI Direct Expenses	BRG Labor Costs			BRG Direct Expenses
Task A0 Project Coordination & Management	2	20	12			14										48	\$ 5,784
Task A1 Additional Response to Comments Effort		2	40													16	\$ 35,326
Task A2 Incorporation of Additional Response to Comment Revisions into the EIR and Technical Appendices		2	30	8	8											8	\$ 8,069
Task A3 Sunnyvale Text Revision			6		4											12	\$ 9,414
Task A4 Screenscheck Recirculated Draft EIR		2	8	8	4											6	\$ 8,556
Task A5 Draft EIR		2	8													8	\$ 4,437
Task A6 Meetings and Hearings		10	15													68	\$ 12,243
Task A7 Responses to Comments on Recirculated Draft EIR (80 comments)		2	25													93	\$ 11,808
Task A8 Final EIR		2	8	4												36	\$ 4,777
Task A9 CEQA Findings of Fact/SOC		2	4													28	\$ 4,949
Task A10 MMRP																22	\$ 3,190
Task A11 CEQA Notices - File NOD - No Charge																	
Total Hours	2	44	156	20	16	14	118	221	58	7	84						
Rate	\$ 206	\$ 157	\$ 101	\$ 56	\$ 70	\$ 72	\$ 285	\$ 165	\$ 90	\$ 95	\$ 75						
Labor Costs	\$ 411	\$ 6,929	\$ 15,742	\$ 1,126	\$ 1,113	\$ 1,012	\$ 33,630	\$ 36,665	\$ 5,220	\$ 665	\$ 6,300						

IBI Labor Costs:	\$ 26,333
IBI Direct Expenses:	\$ 300
BRG Labor Costs:	\$ 82,280
BRG Direct Expenses:	\$ 15,980
<b>TOTAL COSTS:</b>	<b>\$ 124,893</b>

\*Other Direct Costs:  
 IBI Group \$ 300  
 BRG Consulting (see breakout below) \$ 15,980  
**Total \$ 16,280**

\*Includes mileage, printing, copies, production costs & the BRG subconsulting costs:  
 Additional Biology Responses and Report/EIR Revisions to Wildlife Agency comments \$ 7,200  
 Additional technical study revisions in response to comments \$ 980  
 ODCs, including printing the Draft and Final PEIR \$ 7,800



**CITY OF OCEANSIDE  
AMENDMENT No. 3 TO  
PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: Circulation Element Update Amendment 902562200561**

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment"), dated January 5, 2012, for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and IBI Group, hereinafter designated as "CONSULTANT."

**RECITALS**

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement dated the October 5, 2005, and amendments No.1 and No. 2 thereto, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein;

**AMENDMENT**

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

1. **SCOPE OF WORK.** The project is more particularly described as follows (detailed Scope of Work attached as Exhibit 1):
  - 1.1 **Project Management and Meetings/Coordination;**
  - 1.2 **Additional Response to Comments;**
  - 1.3 **Incorporation of Additional Response to Comments Revisions into Final PEIR;**
  - 1.4 **Sunnyvale Text Revisions;**
  - 1.5 **Screencheck Recirculate Draft PEIR;**
  - 1.6 **Recirculate Draft PEIR;**
  - 1.7 **Meeting and Public Hearings;**
  - 1.8 **Response to Comments on Recirculated Draft PEIR (80 New Comments);**
  - 1.9 **CEQA Findings of Fact/Statement of Overriding Considerations;**
  - 1.10 **Mitigation Monitoring and Reporting Program**
  - 1.11 **CEQA Notices – File Notice of Determination;**

**Circulation Element Update Amendment No. 3 - 901562200561**

2. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Amendment No. 3, is hereby amended by adding a lump sum amount not to exceed \$124,893 for additional work for a total contract amount not to exceed \$690,671.

All other terms, conditions, covenants and provisions of the agreement shall remain in full force and effect. In the event of any conflict between the terms of the original agreement and this amendment, the terms of this amendment shall control.

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.

3. **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 City Engineer within 150 calendar days.
4. Except as expressly set forth in this Amendment, the Agreement shall remain in full force and effect and is hereby ratified and reaffirmed.

**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 being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures on the dates set forth below.

IBI GROUP, a California Partnership  
By: [Signature]  
Steve Schibuola, Director

Date: 12/22/2011

By: [Signature]  
David Thom, Managing Director

Date: 12/22/2011

95-326-8721  
Employer ID No.

CITY OF OCEANSIDE  
By: \_\_\_\_\_  
Peter Weiss, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
[Signature]  
City Attorney

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

G:\ADMIN\Admin Docs - Specs and Staff Reports\Professional Services Agreements\IBI Amend#3 PSA version 2.doc

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

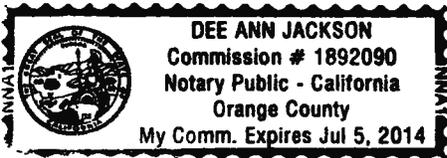
State of California

County of Orange

On 12-28-11  
Date

before me, Dee Ann Jackson  
Here Insert Name and Title of the Officer

personally appeared David Thom  
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 Dee Ann Jackson  
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: City of Oceanside Amend 3 #90256220056 Circulation Element Update

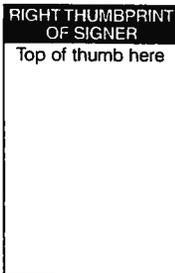
Document Date: 12-28-11 Number of Pages: 2

Signer(s) Other Than Named Above: Steve Schibuola

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: David Thom

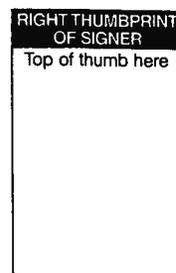
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: IBI Group

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_

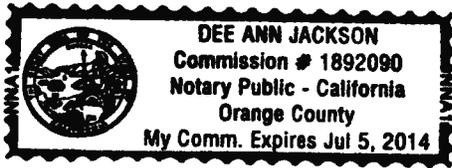
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Orange }

On 12-28-11 before me, Dee Ann Jackson  
Date Here Insert Name and Title of the Officer

personally appeared Stefano Schibuola  
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 Dee Ann Jackson  
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: Circulation Element Update  
City of Oceanside Amend 3 #902562200561

Document Date: 12-28-11 Number of Pages: 2

Signer(s) Other Than Named Above: David Thom

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Steve Schibuola

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



Signer Is Representing: FBI Group

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_

[2005 Circulation Element Update: Project No. 561-775622-5241]  
**CITY OF OCEANSIDE**

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this 5<sup>th</sup> day of October, 2005, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and IBI Group, hereinafter designated as "CONSULTANT".

**RECITALS**

- A. CITY desires to obtain professional engineering services from an independent contractor for the above named project.
- B. CONSULTANT has submitted a proposal to provide engineering services for the CITY in accordance with the terms set forth in this Agreement.
- C. CITY desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to CITY as an independent contractor.
- D. CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education and expertise.

**NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

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

The CONSULTANT shall perform, in a manner satisfactory to the City and the Deputy Public Works Director/Transportation Manager, all services in accordance with the Scope of Work attached hereto as Exhibit A and incorporate herein by this reference.

1.1 **PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.** The professional services to be performed by CONSULTANT shall consist of but not be limited to the following:

- 1.1.1 Work closely with the Transportation Manager in performing work in accordance with this Agreement in order to receive clarification as to the result which the CITY expects to be accomplished by CONSULTANT. The Transportation Manager, under the authority of the City Manager, shall be the CITY'S authorized representative in the interpretation and enforcement of all work performed in

[2005 Circulation Element Update: Project No. \_\_\_\_\_]

connection with this Agreement. The Transportation Manager may delegate authority in connection with this Agreement to the Transportation Manager's designees. For the purposes of directing the CONSULTANT'S performance in accordance with this Agreement, the Transportation Manager delegates authority to John Amberson, Transportation Planner of the Transportation Division.

- 1.1.2 In compliance with Government Code section 7550, the CONSULTANT shall include a separate section in the proposal prepared pursuant to this Agreement, which contains a list of all the subcontractors and dollar amounts of all contracts and subcontracts required for the preparation of work described in this Agreement.
- 1.1.3 Visit and carefully examine the location of the project as often as necessary to become acquainted with all conditions which are visible or could reasonably be discovered, and which might have an impact upon the project report.
- 1.1.4 Design, prepare and submit to the Transportation Manager a final project study report as described in the Scope of Work, and in the time and manner set forth in this Agreement.
- 1.1.5 Provide assistance to the City upon request by Transportation Manager to include the services listed below and as described by the CONSULTANT scope of work subject to the contract budget:
  - a. Hold regular project status meetings and provide meeting minutes for these meetings.
  - b. Prepare needed reports and notices for public meetings.
  - c. Attend public meetings with the Transportation Manager or his designees.

1.2 **SERVICES PROVIDED BY CITY.** The CITY shall perform the following services:

- 1.2.1 Provide access to any public improvement plans, records and existing reference materials or survey data currently available within the City's files needed for CONSULTANT'S reference to accomplish the project.
- 1.2.2 Upon request, verify the location of existing CITY owned utilities.
- 1.2.3 Provide all legal advertising mailings and postings required.
- 1.2.4 Provide overall project management.

**[2005 Circulation Element Update: Project No. \_\_\_\_\_]****2.0 TIMING REQUIREMENTS**

2.1 Time is of the essence in the performance of work under this Agreement and the following timing requirements shall be strictly adhered to unless otherwise modified in writing as set forth in Section 2.5. Failure by CONSULTANT to strictly adhere to these timing requirements may result in termination of this Agreement by the CITY and the assessment of damages against the CONSULTANT for delays.

2.2 CONSULTANT shall prepare and deliver 20 bound copies, 2 unbound copies and 1 electronic copy of the first draft of the Updated Circulation Element report to the Transportation Manager no later than 10 months from the Notice to Proceed. No work shall be performed by the CONSULTANT beyond the completion of the draft Updated Circulation Element until the Transportation Manager has given written approval following review and comments.

2.3 CONSULTANT shall prepare and deliver 20 bound copies, 2 unbound copies and 1 electronic copy of the final Updated Circulation Element report to the Transportation Manager no later than 12 months from the Notice to Proceed.

2.4 CONSULTANT shall submit all requests for extensions of time for performance in writing to the Transportation Manager no later than ten (10) calendar days after the start of the condition that purportedly caused the delay, and not later than the date on which performance is due. The Transportation Manager shall review all such requests and may grant reasonable time extensions for unforeseeable delays which are beyond CONSULTANT'S control.

2.5 For all time periods not specifically set forth herein, the CONSULTANT shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, facsimile, hand delivery or mail.

3.0 **DESIGN CRITERIA AND STANDARDS.** All work shall be performed in accordance with applicable CITY, state and federal codes and criteria. In the performance of its professional services, CONSULTANT shall use the degree of care and skill ordinarily exercised by CONSULTANT under similar conditions. Contract specifications shall conform to the CITY'S specification procedures and the format of the CITY'S standard form Contract Documents for Public Works projects.

4.0 **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY

[2005 Circulation Element Update: Project No. \_\_\_\_\_]

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 Transportation Manager. 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 Transportation Manager. 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.

5.0 **CITY BUSINESS LICENSE.** Prior to the commencement of any work under this agreement, the CONSULTANT shall obtain and present a copy of an Oceanside City Business License to the Transportation Manager.

6.0 **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 these Award Documents. The certification shall be in accordance with Subsections 7.3 through 7.8 of this Agreement.

7.0 **LIABILITY INSURANCE.**

7.1 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.

7.2.1 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
--------------------------------------	--------------

561-775622-5241

[2005 Circulation Element Update: Project No. \_\_\_\_\_]  
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 \$ 2,000,000

Automobile Liability Insurance \$ 1,000,000

\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

7.2.2 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 purchases by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the Transportation 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.

7.3 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 an additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

7.4 All insurance companies affording coverage to the CONSULTANT pursuant to this Agreement shall be insurance organizations authorized 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.

7.5 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.

7.6 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable

[2005 Circulation Element Update: Project No. \_\_\_\_\_]

endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

- 7.7 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.
- 7.8 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.
- 8.0 **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).

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

- 9.0 **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims or lawsuits for damages to persons or property arising out of the negligent acts, errors, 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, expert fees, attorneys' 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 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.

[2005 Circulation Element Update: Project No. \_\_\_\_\_]

Attachment B/C

10.0 **ERRORS AND OMISSIONS.** In the event that the Transportation Manager determines that the CONSULTANT'S negligence, misconduct, errors or omissions in the performance of work under this Agreement has resulted in expense to CITY greater than would have resulted if there were no such negligence, errors or omissions in the plans or contract specifications, CONSULTANT shall reimburse CITY for the additional expenses incurred by the CITY, including engineering, construction and/or restoration expense. Nothing herein is intended to limit CITY'S rights under Sections 7, 8 or 9.

11.0 **NO CONFLICT OF INTEREST.** The CONSULTANT shall not be financially interested in any other CITY contract for this project. For the limited purposes of interpreting this section, the CONSULTANT shall be deemed a "City officer or employee", and this Section shall be interpreted in accordance with Government Code section 1090. In the event that the CONSULTANT becomes financially interested in any other CITY contract for this project, that other contract shall be void. The CONSULTANT shall indemnify and hold harmless the CITY, under Section 9 above, for any claims for damages resulting from the CONSULTANT'S violation of this Section.

12.0 **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and project report 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.

13.0 **COMPENSATION.**

13.1 For work performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT in accordance with the schedule of billing rates set forth in Exhibit B, attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this Agreement without prior written approval of the Transportation Manager. CONSULTANT'S compensation for all work performed in accordance with this Agreement shall not exceed the total contract price of \$299,765.00.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the Transportation Manager. CONSULTANT shall obtain approval by the Transportation Manager prior to performing any work which results in incidental expenses to CITY as set forth in

541-775622-5241

[2005 Circulation Element Update: Project No. \_\_\_\_\_]  
Section 13.2.2.

13.2 CONSULTANT shall maintain accounting records including the following information:

13.2.1 Names and titles of employees or agents, types of work performed and times and dates of all work performed in connection with this Agreement which is billed on an hourly basis.

13.2.2 All incidental expenses including reproductions, computer printing, postage, mileage and subsistence.

13.3 CONSULTANT'S accounting records shall be made available to the Transportation Manager for verification of billings, within a reasonable time of the Transportation Manager's request for inspection.

13.4 CONSULTANT shall submit monthly invoices to CITY. CITY shall make partial payments to CONSULTANT not to exceed the total contract price within thirty (30) days of receipt of invoice, subject to the approval of the Transportation Manager.

13.4.1 Final payment shall be made to CONSULTANT upon CONSULTANT's preparation of the final Updated Circulation Element Report to the satisfaction of the Transportation Manager.

14.0 **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement, in accordance with Section 13. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

15.0 **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT'S duties be delegated, without the express written consent of the CITY. Any attempt to assign or delegate this Agreement without the express written consent of the CITY shall be void and of no force or effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

[2005 Circulation Element Update: Project No. \_\_\_\_\_]

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

16.0 **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.

17.0 **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 applicable 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.

18.0 **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.

19.0 **CLAIMS.**

No suit shall be brought on this contract unless all statutory claims filing requirements have been met.

20.0 **NOTICES.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

**TO CITY:**

City of Oceanside  
Transportation Manager  
300 North Coast Highway  
Oceanside, CA 92054

**TO CONSULTANT:**

IBI Group  
David Chow, P.E., Director  
18401 Von Karman Avenue, Suite 110  
Irvine, CA 92612

[2005 Circulation Element Update: Project No. \_\_\_\_\_]

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

- a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or
- b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

21.0 **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:

CONSULTANT

By:   
DAVID TAM, Managing Director

By:   
DAVID CHOW, Local Director

95-326-8721  
Employer ID No.

CITY OF OCEANSIDE

By:   
Steven R. Jepsen, City Manager

APPROVED AS TO FORM:

, DEPUTY  
City Attorney

561-775622-5241

[2005 Circulation Element Update: Project No. \_\_\_\_\_]

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

State of California  
County of Orange

On 8-3-05 before me, Dee Ann Jackson  
(DATE) (NAME/TITLE OF OFFICER-I.e. "JANE DOE, NOTARY PUBLIC")

personally appeared David Chow and  
(NAME(S) OF SIGNER(S))

David Thom

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.

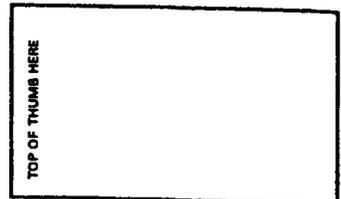


Witness my hand and official seal.

(SEAL)

Dee Ann Jackson  
(SIGNATURE OF NOTARY)

RIGHT THUMBPRINT (Optional)



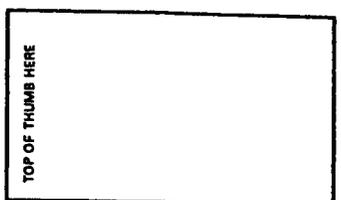
CAPACITY CLAIMED BY SIGNER(S)  
 INDIVIDUAL(S)  
 CORPORATE

OFFICER(S) \_\_\_\_\_ (TITLE)  
 PARTNER(S)  LIMITED  
 GENERAL  
 ATTORNEY IN FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
(Name of Person(s) or Entity(ies))

IBI Group

RIGHT THUMBPRINT (Optional)



CAPACITY CLAIMED BY SIGNER(S)  
 INDIVIDUAL(S)  
 CORPORATE

OFFICER(S) \_\_\_\_\_ (TITLE)  
 PARTNER(S)  LIMITED  
 GENERAL  
 ATTORNEY IN FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
(Name of Person(s) or Entity(ies))

ATTENTION NOTARY

The information requested below and in the column to the right is OPTIONAL. Recording of this document is not required by law and is also optional. It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:  
Title or Type of Document 2005 Circulation Element Update  
Number of Pages 1 Date of Document Revised 10-2004  
Signer(s) Other Than Named Above Steven R. Tepsen

