ITEM NO. 10

STAFF REPORT

CITY OF OCEANSIDE

DATE: May 16, 2012

TO: Honorable Mayor and City Councilmembers
Harbor District Board of Directors

FROM: City Manager's Office

SUBJECT: **AMENDMENT 3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH THE FERGUSON GROUP FOR FEDERAL LEGISLATIVE SUPPORT**

SYNOPSIS

Staff recommends that the City Council and Harbor District Board approve Amendment 3 in the amount of $160,084 for a two-year period ($80,042 annually) to the professional services agreement with The Ferguson Group of Washington, DC, for federal legislative support services, extending the term of the agreement from June 30, 2012, to June 30, 2014; and authorize the City Manager to execute the amendment.

BACKGROUND

The Ferguson Group has represented the City to its federal officials and agencies since 1984 and has facilitated a number of major accomplishments on behalf of the City. Specifically, The Ferguson Group has assisted the City in working with its congressional delegation to attain authorizations and appropriations on projects such as the Shoreline Special Study, Harbor Maintenance Dredging, the El Corazon Senior Center, the City's Public Radio System, Crown Heights Neighborhood Revitalization, Transit Center, San Luis Rey River Clearing, and Oceanside Community Safety Partnership, to name a few. With the help of the Ferguson Group, the City has received millions of dollars over the years of the agreement that the City most likely would not have received.

The Ferguson Group continues to maintain a high profile on behalf of the City in Washington, DC, and they provide exceptional service to the City. The Ferguson Group has specific Oceanside expertise that has assisted the City in maximizing receipt of Federal Appropriations and grants.

ANALYSIS

Due to The Ferguson Group's performance as well as their unique knowledge of the City and its past and current legislative efforts, staff is recommending that the City Council approve Amendment 3 to the current agreement which terminates on June 30,

2012. Staff is recommending that the City Council approve this third amendment which would extend the term of the agreement through June 30, 2014.

Due to the City's budget constraints, in 2010 The Ferguson Group voluntarily rolled back their fee to the FY 2007-08 funding level, which constituted a 10 percent fee reduction. The Ferguson Group, in recognition of the City's ongoing budget constraints, has agreed to maintain their fee for both FY 2012-13 and FY 2013-14.

FISCAL IMPACT

The proposed annual cost for this amendment is $80,042, or $160,084 for FY 2012-13 and 2013-14. This cost has remained at the same level since FY 2007-08. The cost of the agreement is shared as follows:

- 60 percent Water Enterprise Fund
- 35 percent Harbor
- 5 percent General Fund

It is staff's recommendation that the cost for this agreement is acceptable in light of the historic and future monies received through the federal appropriations and grants process.

INSURANCE REQUIREMENTS

The City's standard insurance requirements have been 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 and Harbor District Board approve Amendment 3 in the amount of $160,084 for a two-year period ($80,042 annually) to the professional services agreement with The Ferguson Group of Washington, DC, for federal legislative support services, extending the term of the agreement from June 30, 2012, to June 30, 2014; and authorize the City Manager to execute the amendment.

PREPARED BY:

Michelle Skaggs Lawrence
Deputy City Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

Attachment A: Amendment
Attachment B: PSA dated June 15, 2005

AMENDMENT 3 TO CITY OF OCEANSIDE AGREEMENT WITH THE FERGUSON GROUP FOR FEDERAL LEGISLATIVE SERVICES

This Third Amendment is to the professional services agreement between the CITY OF OCEANSIDE and the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, hereinafter designated as "OCEANSIDE ENTITIES" and THE FERGUSON GROUP, LLC, hereinafter designated as "CONSULTANT", for the Provision of Federal Lobbying Support Services which was entered into on June 15, 2005. The first amendment was entered into on June 6, 2007, and terminated on June 30, 2010. The second amendment was entered into on April 21, 2010, and terminates on June 30, 2012. This third amendment modifies the terms of the June 15, 2005, agreement, as follows:

Section 10.1 – Compensation

10.1 The Ferguson Group's compensation for all work performed in accordance with the Third Amendment, except the reimbursable expenses set forth below, shall not exceed $80,042 for FY 2012-13 (July 1, 2012-June 30, 2013), and $80,042 for FY 2013-14 (July 1, 2013-June 30, 2014). The costs of this Agreement will be borne as follows:

	FY 2012/13	**FY2013/14**
City General Fund (5%)	$ 4,003	$ 4,003
City Water Enterprise Fund (60%)	48,025	48,025
Harbor (35%)	28,014	28,014
	$80,042	$80,042

Section 13 – Duration of Agreement

13 The time period covered by this Third Amendment shall be in effect for two years, beginning July 1, 2012, and terminating on June 30, 2014.

All other terms and conditions of the June 15, 2005, agreement remain in full force and effect and are not modified by this amendment.

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18. 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 OCEANSIDE ENTITIES.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures this _____ day of _____, 2012.

WILLIAM FERGUSON
Chief Executive Officer
The Ferguson Group

PETER A. WEISS
City Manager
City of Oceanside

Chief Financial Officer
The Ferguson Group

52-1953168
Federal Employer ID Number

ATTEST:

Barbara Riegel Wayne, City Clerk

Approved As To Form:

John P. Mullen, City Attorney

Notary Acknowledgements, Proof of Authorization for signatories of CONSULTANT and Insurance Certificates must be attached.

NOTARY ACKNOWLEDGEMENTS MUST BE ATTACHED

District of Columbia: SS
Subscribed and Sworn to before me,
this 7th day of May, 2012

Tonya M. McCray, Notary Public, D.C.
My commission expires April 14, 2014

Notary for Darrel Spencer Ricketts and William Ferguson

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: FEDERAL LEGISLATIVE SUPPORT SERVICES

THIS AGREEMENT is made and entered into this 15th day of June, 2005, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, hereinafter designated as "HARBOR" and the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, hereinafter designated as "COMMISSION" and THE FERGUSON GROUP, LLC, hereinafter designated as "CONSULTANT".

The CITY, HARBOR and COMMISSION are collectively referred to herein as OCEANSIDE ENTITIES".

The CITY shall act as agent for the DISTRICT and COMMISSION for the administration of this agreement.

RECITALS

A. OCEANSIDE ENTITIES desires to obtain professional services from an independent contractor for legislative support, lobbying, and other assistance with Federal legislation and aid programs.

B. OCEANSIDE ENTITIES desires to contract with the CONSULTANT as an independent contractor and the CONSULTANT desires to provide services to OCEANSIDE ENTITIES as an independent contractor.

C. The 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. SCOPE OF WORK. The project is more particularly described below.

1.1. Professional Services Provided by the CONSULTANT. The professional services to be performed by the CONSULTANT shall consist of but not be limited to the following:

1.1.1. The CONSULTANT shall provide the services of a Washington Assistant to the OCEANSIDE ENTITIES and shall act as a liaison between the OCEANSIDE ENTITIES and various Washington, D.C. area agencies.

1.1.2. The Washington Assistant shall work closely with and report directly to the City Manager or the Manager's designee, in order to receive clarification as to the result which the OCEANSIDE ENTITIES expect to be accomplished.

1.1.3. The Washington Assistant shall confer with such other OCEANSIDE ENTITIES personnel as the City Manager may designate at times and places mutually agreed to by both parties.

1.1.4. The Washington Assistant shall advise and confer with the City Manager or his/her designee on all organizational planning and program activity which has a bearing on the ability of the OCEANSIDE ENTITIES to make the best use of Federal aid programs.

1.1.5. The Washington Assistant shall review Federal executive proposals, legislation under consideration, proposed and adopted administrative rules and regulations, and other relevant areas for the purpose of advising the CITY on those items which may have an effect on OCEANSIDE ENTITIES' policies or programs.

1.1.6. The Washington Assistant shall secure and furnish such detailed information as may be available on Federal programs in which the OCEANSIDE ENTITIES indicates an interest.

1.1.7. When requested to do so by the CITY, the Washington Assistant shall review and comment on OCEANSIDE ENTITIES' proposals being prepared for submission to Federal agencies.

1.1.8. The Washington Assistant shall maintain liaison with the CITY's Congressional delegation and will assist the delegation in any matter which the OCEANSIDE ENTITIES determines to be in its best interest in the same manner as any other member of the OCEANSIDE ENTITIES' administrative staff might render assistance.

1.2. The Washington Assistant shall contact Federal agencies on the CITY's behalf when OCEANSIDE ENTITIES' applications are under consideration by such agencies and otherwise take whatever steps appear to be required to obtain the most favorable consideration of such applications.

1.2.1. In fulfilling responsibilities under this Agreement, the Washington Assistant shall act in the name of the OCEANSIDE ENTITIES and with the title, Washington Assistant to the City Manager.

1.3. **Services Provided by the City.** The OCEANSIDE ENTITIES agree to do the following:

1.3.1. The CITY will advise the Washington Assistant of the name or names of persons other than the City Manager who are authorized to request service from the Washington Assistant and the person or persons to be kept advised by the Assistant.

1.3.2. The CITY will supply the Washington Assistant with a summary of all Federal programs in which an OCEANSIDE ENTITY is participating and advise the Washington Assistant of any new applications filed, together with the pertinent details as to the substance of such applications.

1.3.3. The OCEANSIDE ENTITIES will supply the Washington Assistant with copies of budgets, planning documents, and regular reports of the City Manager and departments,

Council Agenda and proceedings, newspapers and other materials which may assist the Washington Assistant.

1.3.4. The OCEANSIDE ENTITIES will reimburse the Washington Assistant for expenses outlined in the "Compensation" section of this Agreement.

2. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement. The CONSULTANT shall respond in the most expedient and appropriate manner under the circumstances, by telephone, fax, hand delivery, or mail.

3. **CRITERIA AND STANDARDS.** All work shall be performed in accordance with applicable City, State and Federal codes and criteria. In the performance of professional services, the CONSULTANT shall use the degree of care and skill ordinarily exercised by the CONSULTANT under similar conditions.

4. **INDEPENDENT CONTRACTOR.** The CONSULTANT's relationship to the OCEANSIDE ENTITIES shall be that of an independent contractor. The CONSULTANT shall have no authority, express or implied, to act on behalf of the OCEANSIDE ENTITIES as an agent, or to bind any of the OCEANSIDE ENTITIES to any obligation whatsoever, unless specifically authorized in writing by the City Manager. The following services are expressly excluded from this Agreement:

a. Representation of local or OCEANSIDE ENTITIES' constituents in pursuit of Federal business;

b. Representation of any of the OCEANSIDE ENTITIES before Congressional Committees or in any judicial or quasi-judicial proceeding;

c. Performance of legal, engineering, accounting, or other similar professional services.

5. **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.

6. **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 Two Hundred Fifty Thousand Dollars ($250,000.00).

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

7. **CONSULTANT'S INDEMNIFICATION OF OCEANSIDE ENTITIES.** CONSULTANT shall indemnify and hold harmless each OCEANSIDE ENTITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent

acts, errors or omissions by the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement.

CONSULTANT's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by any OCEANSIDE ENTITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not.

CONSULTANT's indemnification of each OCEANSIDE ENTITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

8. **NO CONFLICT OF INTEREST.** The CONSULTANT agrees that the CONSULTANT shall not represent other clients with positions directly contrary to those of the OCEANSIDE ENTITIES.

9. **OWNERSHIP OF DOCUMENTS.** All documents prepared or provided by the CONSULTANT under this Agreement shall be the property of the OCEANSIDE ENTITIES. The OCEANSIDE ENTITIES agree to hold the CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the documents prepared or provided by the CONSULTANT. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting participation.

10. **COMPENSATION.**

10.1. The CONSULTANT's compensation for all work performed in accordance with this Agreement, except the reimbursable expenses set forth below, shall not exceed $72,600 for FY 2005-06 (July 1, 2005-June 30, 2006) and $76,230 for FY 2006-07 (July 1, 2006-June 30, 2007). The costs of this Agreement will be borne as follows:

	FY 2005/06	**FY2006/07**
City General Fund (5%)	$ 3,630	$ 3,812
City Water Enterprise Fund (60%)	43,560	45,738
Harbor (30%)	21,780	22,868
CDC (5%)	3,630	3,812
	$72,600	$76,230

10.1.1. Payment shall be made in equal monthly installments. Each monthly installment shall be due on the first day of the month.

10.1.2. OCEANSIDE ENTITIES shall reimburse the Washington Assistant for:

a. All travel expenses incurred pursuant to section 1.1;

b. All travel expenses for attendance at conferences outside of Washington, D.C. when such attendance is requested by the OCEANSIDE ENTITIES;

c. Incidental expenses incurred in the course of conducting OCEANSIDE ENTITIES business, subject to the City Manager's approval;

d. Long distance telephone expenses incurred in the course of conducting OCEANSIDE ENTITIES business, subject to the City Manager's approval;

e. Cost of document production required by the OCEANSIDE ENTITIES, subject to the City Manager's approval.

10.2. The obligation of the OCEANSIDE ENTITIES to reimburse shall not exceed **$4,000** annually for the time period covered by this Agreement.

10.3. CONSULTANT's accounting record shall be made available to the City Manager, for verification of reimbursable expenses, within a reasonable time of the City Manager's inspection request.

11. 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. 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.

12. 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 OCEANSIDE ENTITIES. Any attempt to assign or delegate this Agreement without the express written consent of the OCEANSIDE ENTITIES shall be void and of no force or effect. A consent by the OCEANSIDE ENTITIES to one assignment shall not be deemed to be a consent to any subsequent assignment.

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

13. DURATION OF AGREEMENT. The time period covered by this Agreement shall be in effect for two years, beginning July 1, 2005 and terminating on June 30, 2007.

14. ENTIRE AGREEMENT. This Agreement comprises the entire integrated understanding between OCEANSIDE ENTITIES and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

15. 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 OCEANSIDE ENTITIES.

The CONSULTANT shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful

shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

16. 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.

17. NOTICE. 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 OCEANSIDE ENTITIES:
CITY MANAGER
CITY OF OCEANSIDE
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

TO CONSULTANT:
WILLIAM FERGUSON
THE FERGUSON GROUP, LLC
1130 CONNECTICUT AVE NW, SUITE 300
WASHINGTON, D.C. 20036

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 of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) 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.

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18. 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 OCEANSIDE ENTITIES.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures this 15th day of June, 2005.

WILLIAM FERGUSON
Chief Executive Officer
The Ferguson Group

STEVEN R. JEPSEN
City Manager
City of Oceanside

Chief Financial Officer
The Ferguson Group

52 1953168
Federal Employer ID Number

ATTEST:

Barbara Riegel Wayne, City Clerk

Approved As To Form:

DEPUTY
Pamela J. Walls, City Attorney

Notary Acknowledgements, Proof of Authorization for signatories of CONSULTANT and Insurance Certificates must be attached.

District of Columbia:SS

Subscribed and Sworn to before me this 27th day of May 2005.

Nena Aparte

Notary Public, D.C
My Commission Expires:

Dena Aparte
Notary Public, District of Columbia
My Commission Expires 7-31-2009