ITEM NO. 6

STAFF REPORT

CITY OF OCEANSIDE

DATE: September 19, 2012

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **AMENDMENT 1 TO A PROFESSIONAL SERVICES AGREEMENT WITH MESTRE GREVE ASSOCIATES FOR RADIO FREQUENCY COMPLIANCE REPORT REVIEW**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 in an amount not to exceed $120,000 paid from Developer Deposit Accounts to the professional services agreement with Mestre Greve Associates, Division of Landrum and Brown, Inc., of Laguna Niguel for the supplemental technical review of Radio Frequency (RF) Compliance Reports, adding to the scope of work technical review of 40 additional compliance reports, and authorization for the City Manager to execute the agreement.

BACKGROUND

Applicants for telecommunication projects submit a Radio Frequency (RF) Compliance Report as part of a telecommunications project application. The City contracts with a third party to review these reports.

On October 11, 2010, a contract for 20 third party reviews of RF Compliance Reports was granted to Mestre Greve in an amount not to exceed $3,000 for each project. The total contract was capped at $60,000. All funding for the payments to the firm were made from deposits made by the Telecommunication applicants, with the City acting only in a fiduciary capacity by arranging for the reviews and paying the bills that were presented. No City funds were expended.

In April 2011, Council approved the use of Developer Deposit Accounts for complex projects, which includes Conditional Use Permits (CUP) for the Telecommunications industry. In addition to the initial deposit required for the CUP, an additional $3,000 has been collected for the required third party reviews. This system has been used for the 20 third party reviews that have been completed in the past two years.

ANALYSIS

Mestre Greve has completed the original 20 RF Compliance Reports and staff estimates that up to 40 additional reports will need to be reviewed over the next two years. Therefore, the subject agreement must be amended in an amount not to exceed $120,000.

FISCAL IMPACT

There is no fiscal impact to the City. Section 9 of the agreement, Compensation, outlines the City's collection and disbursement of a not-to-exceed $3,000 for each review. Funds for payment for the reviews are paid from the pre-collected $3,000 developer deposit. Section 2 of the Amendment reiterates this practice. There is no cost to the City for the reviews.

INSURANCE REQUIREMENTS

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

COMMISSION OR COMMITTEE

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 1 in an amount not to exceed $120,000 paid from Developer Deposit Accounts to the professional services agreement with Mestre Greve Associates, Division of Landrum and Brown, Inc., of Laguna Niguel for the supplemental technical review of Radio Frequency (RF) Compliance Reports, adding to the scope of work technical review of 40 additional compliance reports, and authorization for the City Manager to execute the agreement.

PREPARED BY:

Karen Brown
Senior Management Analyst

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

George Buell, Development Services Director

John Helmer, Interim City Planner

Teri Ferro, Financial Services Director

Attachments:
Amendment 1 to Professional Services Agreement

Consultant Original
Document No. 12-D0477-4

CITY OF OCEANSIDE
AMENDMENT #1 TO
PROFESSIONAL SERVICES AGREEMENT

PROJECT: SUPPLEMENTAL TECHNICAL REVIEW OF RADIO FREQUENCY (RF) COMPLIANCE REPORTS

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment"), dated July 2, 2012 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Mestre Greve Associates Division of Landrum and Brown, Inc., hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement dated October 11, 2010, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein;

WHEREAS, Consultant has provided supplemental technical review of Radio Frequency (RF) Compliance Reports pursuant to the Agreement;

WHEREAS, there are pending applications to be reviewed beyond the original number outlined in Section 9 of the Agreement;

AMENDMENT

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

1. Consultant will provide 3rd party peer review of RF Compliance Reports submitted as part of the entitlement process for approximately forty (40) proposed wireless telecommunication facility applications over a period of time not to exceed two (2) years;

2. Compensation to Consultant will be a maximum of $3,000 per RF Study to be paid via Developer Deposit Accounts in accordance with the Agreement and current City policy, and will not exceed $120,000 for all work completed. Funding for the reviews will continue to be from Developer Deposit Accounts, and the City will incur no direct costs.

3. 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 Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment 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.

LANDRUM & BROWN, INC.

By: Mark Perryman, President

Date: 3 July 2012

By: Dennis E. Peters, Chief Financial Officer

Date: 3 JULY 2012

31-1095645
Employer ID No.

CITY OF OCEANSIDE

By: Peter Weiss, City Manager

Date: 7-15-12

APPROVED AS TO FORM:

City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

STATE of OHIO
COUNTY of BUTLER
On this 3 day of July, 2012, before me personally came Mark A. Perryman and Dennis E. Peters, to me known, who being by me duly sworn, did depose and say that they are the President and Chief Financial Officer of Landrum & Brown, Inc., the corporation described in and which executed the within instrument; that the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that is was affixed by order to the Board of Directors of said corporation; and that they signed their names thereto by like order.

I:\City Attorney\Professional Services Agreement Short Amendment 2008 .doc

NOTARIAL SEAL STATE OF OHIO

SUZANNE M. ROEDER
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
October 12, 2016

(Revised 11-2008)

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: SUPPLEMENTAL TECHNICAL REVIEW OF RADIO FREQUENCY (RF) COMPLIANCE REPORTS

THIS AGREEMENT, dated October 11th, 2010 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Mestre Greve Associates Division of Landrum and Brown, 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: CONSULTANT will review and provide comments on Radio Frequency (RF) Compliance Reports adequacy and compliancy with FCC regulations. Consultant will conduct an initial review on Radio Frequency (RF) Compliance Reports and a subsequent review to confirm that previous comments (if applicable) are satisfactorily addressed. The subject review will be a 3rd party peer review of RF Compliance Reports submitted as part of the entitlement process for approximately **20** proposed wireless telecommunication facilities located throughout the City of Oceanside, CA.

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

   2.1.1 Work closely with the City Planner in performing work in accordance with this Agreement in order to receive clarification as to the work product the CITY expects from the CONSULTANT. The City Planner, under the authority of the City Manager, shall be the CITY'S authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The City Planner may delegate authority in connection with this Agreement to the City Planner's designees. For the purposes of directing the CONSULTANT'S performance in accordance with this Agreement, the City Planner delegates authority to Russ Cunningham, Senior Planner and/or Richard Greenbauer, Senior Planner.

3. **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 Planner.

4. **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.

5. **LIABILITY INSURANCE.**

5.1. 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.

5.2 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
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.

5.3 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.

5.4 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.

5.5 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.

5.6 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.

5.7 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.

5.8 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.

5.9 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.

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 One Million Dollars ($1,000,000.00).

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

7. **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 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.

8. **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.

9. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed $3,000.00 per RF Compliance Report reviewed. The total price to review 20 RF Compliance Reports shall not exceed a total contract price of $60,000.00. The applicant submitting the RF

SUPPLEMENTAL TECHNICAL REVIEW
OF
RADIO FREQUENCY (RF) COMPLIANCE REPORTS

Compliance Report as part of the project application submittal will deposit an initial developer deposit to the City in the amount of $3,000.00. Payment for the 3rd Party Peer review will be disbursed directly from the established developer deposit account. City's payment obligations under this agreement are contingent upon the City's receipt of the developer's deposit for the applicable report to be reviewed. Subject to the foregoing contingency, invoices will be paid within 30 days of receipt of the final bill for each RF Compliance Report review and subsequent review, if applicable. In no event shall the report review exceed the amount of $3,000.00 per report. This will be a no cost to the City agreement.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the City Planner. CONSULTANT shall obtain approval by the City Planner prior to performing any work, which results in incidental expenses to the CITY.

10. **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 Planner within 10 working days.

11. **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.

12. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

    The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

    Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

13. **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.

SUPPLEMENTAL TECHNICAL REVIEW
OF
RADIO FREQUENCY (RF) COMPLIANCE REPORTS

14. **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.

LANDRUM & BROWN, INC.

By: _____
Mark Perryman, President

Date: 10-20-10

By: _____
Dennis E. Peters, Chief Financial Officer

Date: 10-19-10

CITY OF OCEANSIDE

By: _____
Development Services Director

Date 11.4.10

APPROVED AS TO FORM:

Barbara Hamilton, ASST.
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT

STATE OF OHIO
COUNTY OF HAMILTON

On this 20 day of October, 2010, before me personally came Mark Perryman and Dennis E. Peters, to me known, who being by me duly sworn, did depose and say that they are the President and Chief Financial Officer of Landrum & Brown, Inc., the corporation described in: and which executed the within instrument; that the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that is was affixed by order to the Board of Directors of said corporation; and that they signed their names thereto by like order.

Catherine M Butcher
Notary Public

NOTARIAL SEAL STATE OF OHIO
Catherine M. Butcher
Notary Public, State of Ohio
My Commission Expires May 1, 2013