STAFF REPORT

ITEM NO. 14

CITY OF OCEANSIDE

DATE: December 18, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH KEYSER MARSTON ASSOCIATES, INC IN THE AMOUNT OF $75,000 FOR FINANCIAL ADVISORY SERVICES FOR PROPOSED LAND USE AND DEVELOPMENT PROJECTS**

SYNOPSIS

Staff recommends that the City Council approve a Professional Services Agreement (PSA) with Keyser Marston Associates, Inc. in the amount of $75,000 for financial advisory services of proposed land use and development projects; and authorize the City Manager to execute the Agreement.

BACKGROUND

In March 2009 a Request for Qualifications for Financial Advisor Services was sent to 14 firms throughout California and resulted in eight responses. Two firms did not meet the minimum requirements and the remaining six firms were interviewed by staff. Staff recommended that a pool of four firms be established to provide both general and specialized financial advisory services. On June 10, 2009, the City Council approved five-year professional services agreements with the four firms which included Keyser Marston Associates of San Diego (KMA). The five-year agreement with KMA is for financial services on an as-needed basis.

ANALYSIS

The City Council action taken on June 10, 2009, approved a PSA with KMA for as-needed financial services as a result of a Request for Qualifications process. That PSA qualifies KMA to be awarded a contract for financial advisory services for proposed land use and development projects; however, individual agreements for specific projects would require City Council approval, regardless of contract price.

The fundamental objective for the financial advisory services would be to assist City staff in conducting third-party peer reviews for proposed changes to the City's General Plan Land Use Element, Zoning Ordinance, and/or other proposed land development projects or land use policy changes.

FISCAL IMPACT

Work billed under this agreement will be charged directly to Developer Deposit Account 101.2076.00002 at the hourly rate billed to the City by KMA.

INSURANCE REQUIREMENTS

The City's standard insurance requirements have been maintained.

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 a Professional Services Agreement (PSA) with Keyser Marston Associates, Inc. in the amount of $75,000 for financial advisory services of proposed land use and development projects; and authorize the City Manager to execute the Agreement.

PREPARED BY:

Megan Crooks
Senior Management Analyst

SUBMITTED BY:

Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

George Buell, Development Services Director

Marisa Lundstedt, City Planner

James R. Riley, Financial Services Director

Attachments:
1) Professional Services Agreement
2) Professional Services Agreement dated June 10, 2009

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: FINANCIAL ADVISORY SERVICES FOR PROPOSED LAND USE AND DEVELOPMENT PROJECTS

THIS AGREEMENT, dated December 18, 2013 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Keyser Marston Associates, Inc., hereinafter designated as "CONSULTANT."

RECITALS

A. CITY desires to obtain professional financial advisory services from an independent contractor for the above named project.

B. CONSULTANT has submitted a proposal to provide financial services for the CITY and 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.

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 been previously selected and approved as part of a pool of firms for which as-needed services may be contracted from.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: Evaluation shall principally involve a third party evaluation which may include an applicant's fiscal study submitted for a proposed project and fiscal and economic impacts of proposed land uses and development projects.

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 Amy Fousekis, Principal 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 negligent acts, errors or omissions or wrongful acts or willful misconduct 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 with the exception of CONSULTANT'S proprietary computer programs 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 a total contract price of $75,000. Payment for work performed will be disbursed directly from an 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. CITY shall notify CONSULTANT when the developer's deposit has been received by CITY for the applicable report which will precede CONSULTANT undertaking any assignment under this contract. Subject to the foregoing contingency, invoices will be paid within 30 days of receipt of the final bill for each review and subsequent review, if applicable.

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.

9.1 Hourly rates and eligible job expenses for the aforementioned COMPENSATION, shall be those as defined in the Professional Services Agreement dated June 10, 2009, item 7.0 COMPENSATION which is herein incorporated by way of this reference and is attached.

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 15 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.

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.

KEYSER MARSTON ASSOCIATES, INC

By: _____
Gerald M. Trimble, Managing Principal

Date: 12/10/13

By: Paul C Marra
Paul C. Marra, Vice President

Date: 12/10/13

94-2363741
Employer ID No.

CITY OF OCEANSIDE

By: _____
Steven R. Jepsen, City Manager

Date: _____

APPROVED AS TO FORM:

_____
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of SAN DIEGO

On 12/10/2013 (Date) before me, DORIS KUGLER, NOTARY PUBLIC (Here Insert Name and Title of the Officer),

personally appeared GERALD M. TRIMBLE + PAUL C. MARRA (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.

OFFICIAL SEAL
DORIS KUGLER
NOTARY PUBLIC-CALIFORNIA
COMM. NO. 1976862
SAN DIEGO COUNTY
MY COMM. EXP. MAY 21, 2016

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 _____ (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 Professional Services Agreement

Document Date: 12/10/13 Number of Pages: 6 + Notary Ack!

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: GERALD M. TRIMBLE
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: Managing Principle

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: PAUL C. MARRA
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: Vice President

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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City Original
Document No. 09-D0355-1
Document No. 09-D0355A-3
6/10/09 (9)

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 10th day of June 2009, by and between the CITY OF OCEANSIDE, a municipal corporation, and OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION (OCDC), a municipal corporation, hereinafter collectively designated as "CITY", and Keyser Marston Associates, Inc., hereinafter designated as "CONSULTANT".

RECITALS

A. CITY desires to obtain professional financial advisory services from an independent contractor for the City of Oceanside and the Oceanside Community Development Commission.

B. CONSULTANT has submitted a proposal to provide financial advisory 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: assist the CITY on an as-needed basis in connection with any financings or projects that the City may undertake.

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 Redevelopment

a. Verify tax increment revenue for the latest fiscal year
b. Calculate and project tax increment revenue for the next three years
c. Review and analyze five (5) years of historical assessed value and tax revenue receipts for the Project Area, evaluate the impact of development agreement for Agency financings
d. Compile and analyze the Project Area's base year assessed value, including

adjustments made by the County Auditor-Controller

e. Complete analysis of the Project Area's redevelopment plan, including number of plan years remaining, and any restrictive covenants
f. Thorough review of existing pass-through agreements, disposition and development agreements, and owner participation agreements for the Project Area, including subordination and other restrictive language
g. Proforma analysis on RDA projects
h. Redevelopment negotiations with developers or others to meet the goals of the Redevelopment Plan
i. Develop the 5-Year Implementation Plan and updates to the Plan, and other reports as required by Redevelopment law
j. Analyze the potential for new redevelopment project areas
k. Review, analyze, evaluate, plan and attend meetings regarding new redevelopment legislation or challenges to City processes or calculations

1.1.2 Housing

a. Assist in identifying policy issues and developing policies related to affordable housing debt financing and administration
b. Assist City staff in estimating housing set-aside bonding capacity
c. Advise on low and moderate income housing activities, including analysis of alternative strategies, development of relationships with affordable housing developers, and assist in structuring financing for projects (which may also utilize forms of tax-exempt financing)

1.1.3 Financial Management/Advisory Service

a. Compile feasibility analyses based on market conditions and assumptions provided by the CITY's financing team
b. Review and analyze legislation that may have a financial impact on the City
c. Other projects and activities as requested by CITY

2.0 **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 Finance Director. 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.

CONSULTANT is not acting as a fiduciary to the CITY in carrying out the professional services described in Section 1.1 hereof.

3.0 **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 this Agreement.

4.0 **LIABILITY INSURANCE.**

4.1 CONSULTANT shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including, but not limited to, premises and automobile.

4.2.1 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
General Aggregate	$ 2,000,000*

-OR-

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	$ 1,000,000
General limit project specific	$ 2,000,000

-AND-

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.

4.2.2 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 CITY'S Project Manager promptly of all losses or claims over $25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.3 Insurance company providing General Liability insurance 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.

4.4 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.

4.5 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.

4.6 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

4.7 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date; or immediately upon receipt. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.

4.8 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.

5.0 **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.

6.0 **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 conduct, negligent acts, errors, omissions or wrongful acts of 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 tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7.0 **COMPENSATION.**

7.1 Financial advisory projects and services will be billed based on an hourly billing rate:

Professional	Hourly Rate
Managing Principals	$280.00
Senior Principals	$270.00
Principals	$250.00
Managers	$225.00
Senior Associates	$187.50
Associates	$167.50
Senior Analysts	$150.00
Analysts	$130.00
Technical Staff	$ 95.00
Administrative Staff	$ 80.00

7.2 Directly related job expenses not included in the above rates are: auto mileage, air

fares, hotels and motels, meals, car rentals, taxies, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at actual cost, and appropriate documentation and third party receipts will be provided for all expenses.

8.0 **TERM OF AGREEMENT**. CONSULTANT has been retained as one of four firms to provide financial advisory services to the CITY for five years from the date of this agreement.

9.0 **TERMINATION OF AGREEMENT.** The CITY may terminate this Agreement for any reason by providing thirty (30) days written notice to the CONSULTANT.

10.0 **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.

11.0 **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 local, state and federal laws whether or not said laws are expressly stated or referred to herein.

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

12.0 **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.

13.0 **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
Finance Director
300 North Coast Highway
Oceanside, CA 92054

TO CONSULTANT:
Keyser Marston Associates, Inc.
Paul C. Marra, Senior Principal
1660 Hotel Circle North, Suite 716
San Diego, CA 92108

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.

14.0 **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:

KEYSER MARSTON ASSOCIATES, INC.

By: GERALD M. TRIMBLE
Name/Title MANAGING PRINCIPAL

By: Paul C. Marra
Name/Title
Paul C. Marra
Vice President

CITY OF OCEANSIDE

By: Peter Weiss
Peter Weiss, City Manager/
Executive Director CDC

APPROVED AS TO FORM:

By: John Mullen
City Attorney/
General Counsel CDC

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of SAN DIEGO

On 4/29/2009 (Date) before me, DORIS KUGLER, NOTARY PUBLIC (Here Insert Name and Title of the Officer),

personally appeared GERALD M. TRIMBLE + PAUL C. MARRA (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 _____ Signature of Notary Public

DORIS KUGLER
COMM.#1796295
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
My Comm. Expires May 21, 2012
JD11 JD11

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 - Professional Services Agreement

Document Date: 4/29/2009 Number of Pages: 7 + CA Notary ACK + certificate of Liability ins.

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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