

STAFF REPORT*CITY OF OCEANSIDE*

DATE: March 19, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Human Resources Department

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH ASPEN RISK MANAGEMENT GROUP FOR CITYWIDE SAFETY CONSULTING AND TRAINING SERVICES**

SYNOPSIS

Staff recommends that the City Council approve a professional services agreement in an amount not to exceed \$131,300 with Aspen Risk Management Group of San Diego for safety consultation and training services commencing March 2014 through June 2015; and authorize the City Manager to execute the agreement.

BACKGROUND

Safety administration and training has been handled in the past by a staff member in the Risk Management Division. Over the past 24 months, the City has hired two separate employees to handle the responsibility of this position however, staff was not retained and the position is currently vacant. In an effort to provide consistent safety support for City employees, the decision was made to contract out for the services and use the funding from the position to support that contract. This action will eliminate one position (AD71CM01) from the Human Resources Department and the contract administration will be done by the Risk Manager.

ANALYSIS

The Human Resources Department, Risk Management Division requested quotes for Citywide safety consulting from Bickmore, Aspen Risk Management Group, and Pacific Training Center. The scope of services requested included implementation and maintenance-based safety services predicated on the state and federal health and safety regulations to which the City is required to comply. The scope of work includes a framework for onsite safety and risk management consulting, coaching, training and mentoring assistance within the Risk Management Division of the Human Resources Department as specified in the professional services agreement. The City sought a contractor that could provide a safety professional assigned to work onsite one to two days per week who was also supported by a senior level consultant and a team of industry experts. Aspen Risk Management Group was selected because of their expertise and professionalism, their proven track record with California municipalities, their understanding

of the City's scope of services and loss prevention programs, and their comparably priced team-based approach.

Our State and Federal Occupational Safety and Health Administrations (OSHA) have very complex regulations and requirements governing the City's duty to create and maintain a safe and healthy environment for its employees. A solid loss prevention program and the effective administration of that program are essential to the City's ability to meet applicable state and federal health and safety requirements. The risk of employee injury and fines for failure to comply are likely to rise without the assistance of an experienced health and safety contractor.

Contracting out the work currently budgeted to be performed by City staff will reduce the long-term pension obligations of the City. By entering into an agreement with Aspen Risk Management Group, one full time position will be reduced from the Risk Management Division of the Human Resources Department in Fiscal Year 2014/15 and the costs of the salary and benefits converted to payment of this agreement. The Fiscal Year 2013/14 budget has adequate funds to cover the terms of the agreement through the end of June 2014.

FISCAL IMPACT

The Fiscal Year 2013/14 funding will be taken from salary savings in the Workers' Compensation Fund (152010818.5105/5207). The Fiscal Year 2014/15 funding will be budgeted during the normal 2014/15 budget process through the elimination of the Safety Officer position as follows:

Savings from the Elimination of Position No. AD71CM01:

Personnel Expense – Safety Officer Salary	\$ 64,972
Personnel Expense – Safety Officer Modifiers	<u>\$ 24,442</u>
	\$ 89,414

Contract Costs:

Fiscal Year 2013/14 (remainder of FY 2013/14)	\$ 45,900
Fiscal Year 2014/15 (full year)	\$ 85,400

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be provided.

COMMISSION OR COMMITTEE REPORT

Does not apply.

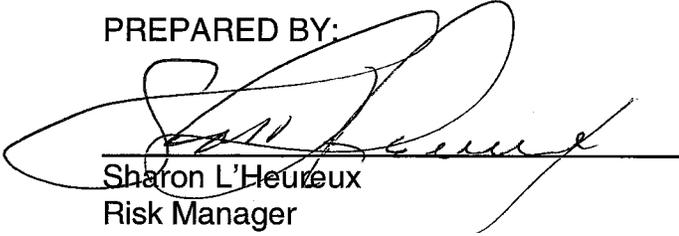
CITY ATTORNEY ANALYSIS

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 in an amount not to exceed \$131,300 with Aspen Risk Management Group of San Diego for safety consultation and training services commencing March 2014 through June 2015; and authorize the City Manager to execute the agreement.

PREPARED BY:


Sharon L'Heureux
Risk Manager

SUBMITTED BY:


Steve Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager
James Riley, Financial Services Director



CITY OF OCEANSIDE

PROFESSIONAL CONTRACTOR SERVICES AGREEMENT

PROJECT: Safety Consultation Services

THIS AGREEMENT, dated March 3, 2014 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and ASPEN RISK MANAGEMENT GROUP, hereinafter designated as "CONTRACTOR."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: City-wide Safety Consulting and Training, as outlined below, for the period March 2014 through June 2015.

Fiscal Year 2013/14:

Consultant and training services will be provided as follows: Sixteen (16) hours per week during the period March 2014 - June 2014

Fiscal Year 2014/15:

Consultant and training services will be provided as follows: Sixteen (16) hours per week for approximately ten (10) weeks, and thereafter eight (8) hours per week for approximately thirty eight (38) weeks during the period July 2014 - June 2015

See Appendix A for a more detailed scope of work.

2. **INDEPENDENT CONTRACTOR.** CONTRACTOR'S relationship to the CITY shall be that of an independent contractor. CONTRACTOR 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. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONTRACTOR shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR 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 CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of this

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Agreement.

4. LIABILITY INSURANCE.

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

4.2 CONTRACTOR shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

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

Commercial General Liability Insurance
(bodily injury and property damage)

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

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONTRACTOR under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONTRACTOR to restore the required limits. The CONTRACTOR shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONTRACTOR resulting from any of the CONTRACTOR'S work.

4.4 All insurance companies affording coverage to the CONTRACTOR 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

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employees shall be excess only and not contributing with insurance provided pursuant to this Section.

- 4.5 All insurance companies affording coverage to the CONTRACTOR 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.
- 4.6 CONTRACTOR shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONTRACTOR shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONTRACTOR as specified in this Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.
5. **CONTRACT BONDS (for contracts exceeding \$25,000).** If the total contract price specified in Section 8 of this Agreement exceeds \$25,000, or if any amendment to this Agreement causes the total contract price to exceed \$25,000, before entering upon the performance of work, CONTRACTOR shall provide two good and sufficient bonds in the amounts listed below:
 - **Performance Bond** in a sum not less than one hundred percent (100%) of the total contract price, to guarantee faithful and timely performance of all work, in a manner satisfactory to the CITY, and further to guarantee that all materials and workmanship will be free from original or developed defects.
 - **Payment Bond** that meets the requirements of California Civil Code section 9554, in a sum not less than one hundred percent (100%) of the total contract price, to satisfy claims of material suppliers, mechanics and laborers employed by CONTRACTOR on the work that is the subject of this Agreement.

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6. **CONTRACTOR'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law, CONTRACTOR 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 the negligent acts, errors or omissions or wrongful acts or conduct of the CONTRACTOR, 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. CONTRACTOR'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, CONTRACTOR 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 conduct, tortious acts or omissions of the CONTRACTOR.

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

7. **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and other documents, prepared or provided by the CONTRACTOR under this Agreement shall be the property of the CITY. The CITY agrees to hold the CONTRACTOR 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 CONTRACTOR. CONTRACTOR may retain a copy of all material produced under this Agreement for the purpose of documenting CONTRACTORs participation in this project.

8. **COMPENSATION.** CONTRACTOR'S compensation for all work performed in accordance with this Agreement, shall not exceed \$131,100 and shall be broken down as follows:

Fiscal Year 2013/14:

Consultant and training services for the period March 2104 – June 2014 shall not exceed \$45,900 (\$1,350/8 hr. day for two (2) days per week for seventeen (17) weeks). Each hour over 8 hr. /week is subject to the rate of \$145/hr.

Fiscal Year 2014/15:

Consultant and training services for the period July 2014 – June 2015 shall not exceed \$85,200 (\$1,350/8 hr. day for two (2) days per week for approximately ten

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(10) weeks and \$1,350/8 hr. day for one (1) day per week for approximately thirty eight (38) weeks. Each hour over 8 hr. /week is subject to the rate of \$145/hr.

No work shall be performed by CONTRACTOR in excess of the total contract price without prior written approval of the CITY. CONTRACTOR shall obtain approval by the CITY prior to performing any work that result in incidental expenses to CITY.

9. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the CITY within the following timing requirements:

Fiscal Year 2013/14:

Work shall be completed during the period March 2104 – June 2014 as follows: eight (8) hr. / day for two (2) days per week for seventeen (17) weeks).

Fiscal Year 2014/15:

Work shall be completed during the period July 2104 – June 2015 as follows:
Eight (8) hr. day for two (2) days per week for approximately ten (10) weeks and eight (8) hr. day for one (1) day per week for approximately thirty eight (38) weeks.

10. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONTRACTOR concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.
11. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONTRACTOR 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. **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. **TERMINATION OF AGREEMENT.** Upon five (5) days' written notice to the

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CONTRACTOR, the CITY may, without cause and without prejudice to any other of the CITY's rights or remedies, terminate this Agreement. Upon the service of a notice of termination, the CONTRACTOR shall discontinue the work in the manner, sequence, and at such times as directed by the CITY's project manager. The CONTRACTOR shall remain responsible for the quality and fitness of the work performed by the CONTRACTOR before termination of the Agreement. All requirements of the Agreement pertaining to work completed or to be completed as of the time of termination shall survive the termination, including without limitation all indemnities, warranties, requirements for preparation of record drawings and completion of any "punch list" items directed by the CITY's project manager.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONTRACTOR for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONTRACTOR only for work performed in accordance with the Agreement up to and including the date of termination. Notwithstanding the foregoing, the CONTRACTOR shall not be entitled to recover any loss of anticipated profit or revenue or other economic loss arising out of or resulting from the termination, including without limitation any claim for anticipated profits on the work not performed or lost business opportunity.

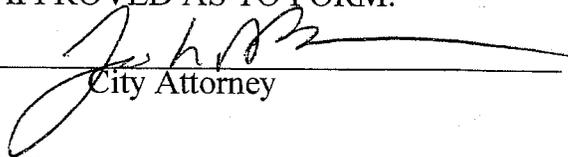
- 14. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONTRACTOR and the CITY.

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 Contractor Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

Aspen Risk Management Group
By: 
Steve Thompson, Chairman

CITY OF OCEANSIDE
By: _____
City Manager

By: _____

APPROVED AS TO FORM:

City Attorney

Employer ID No. 20-2057470

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

[Citywide Safety Consultation]

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Aspen Risk Management Group
By: Cathi Marx
Cathi Marx, President

By: Cathi Marx

Employer ID No. 20-2057470

CITY OF OCEANSIDE

By: _____
City Manager

APPROVED AS TO FORM:

Joh R
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of San Diego

On 3-4-14 before me, Elizabeth Sanchez
Date Here Insert Name and Title of the Officer

personally appeared Stephen John Thompson
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: Elizabeth Sanchez
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: Professional Contractor Service

Document Date: 3-3-14 Number of Pages: 6

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: STEPHEN JOHN THOMPSON

Signer's Name: _____

Corporate Officer — Title(s): CHAIRMAN

Corporate Officer — Title(s): _____

Individual

Individual

Partner — Limited General

Partner — Limited General

Attorney in Fact

Attorney in Fact

Trustee

Trustee

Guardian or Conservator

Guardian or Conservator

Other: _____

Other: _____

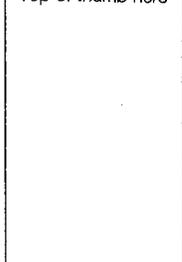
Signer Is Representing: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here



RIGHT THUMBPRINT OF SIGNER
Top of thumb here



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of San Diego }

On 3-3-2014 before me, Elizabeth Sanchez Notary
Date Here Insert Name and Title of the Officer

personally appeared Cathi L Marx
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.



Place Notary Seal Above

Signature: Elizabeth Sanchez
Signature of Notary Public

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: Professional Contractor Services Agreement

Document Date: March 3, 2014 Number of Pages: 6

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Cathi L Marx

Corporate Officer -- Title(s): President

- Individual
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



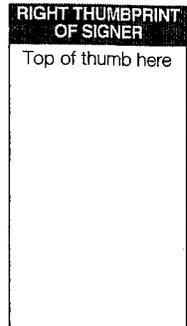
Signer Is Representing: _____

Aspen Risk mgmt group

Signer's Name: _____

Corporate Officer -- Title(s): _____

- Individual
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

APPENDIX A:

Scope of Work Onsite Safety Consultant and Training Services:

This scope of work is associated with the attached Professional Services Agreement "Onsite Safety Consulting". The scope includes a framework for onsite safety and risk management consulting, coaching, training and mentoring assistance within the Risk Management Division of the Human Resources Department for the City of Oceanside. The City expects the Contractor to provide a safety professional who will work onsite at the City supported by a senior level consultant and a team of industry experts.

The City envisions a team-based approach lead by the Risk Manager and senior level consultant assigned to the project by Aspen Risk Management Group. The initial safety consulting and training services are expected to take place in two phases under the following schedule:

- **Phase One:** March 2014 – June 2014. Consulting and training services will be provided on a schedule of eight (8) hr. per day for two (2) days per week for approximately seventeen (17) weeks until the end of the Fiscal year 2013/14.
- **Phase Two:** July 2014 - June 2015. Consulting and training services will be provided on a schedule of eight (8) hr. per day for two (2) days per week for ten (10) weeks and thereafter eight (8) hr. per day for one (1) day per week for approximately thirty eight (38) weeks until the end of the Fiscal year 2014/15.

The scope of work under this agreement shall include, but is not limited to the following:

Phase One/Remainder of Fiscal Year 2013/14:

- Review and Update Injury and Illness Prevention Plan (IIPP), New Employee Safety Orientation and other required processes and procedures outlined in the IIPP.
- This will include developing codes of safe work practices via focus groups for key departments including Public Works, Water Utilities, Park and Recreation, etc.
- Identifying and assessing risks and executing and monitoring actions to identified risks.
- Includes conducting site inspections of key locations such as the public works maintenance yard, wastewater and water treatment plants, hazardous waste disposal, chemical storage, vehicle maintenance and other high hazard areas.
- Develop Training Matrix based on department and job function to include:
 - Type of training by job classification, frequency and training method (Target Solutions, Pacific Safety, other)
- Conduct an audit and update / develop specific programs as identified as priorities such as:
 - Confined Space Entry / Rescue
 - Hazardous Waste Handling, Disposal and Response Procedure
 - Vehicle Inspections including Cargo Loading/Securing

Phase Two/Fiscal Year 2014/15: During this phase, and thereafter; we envision the safety consultant team to provide counsel to and assist the Risk Manager in performance of duties typical of an in-house safety professional such as but not limited to:

- Audits of existing safety programs and effectiveness of implementation;
- Safety program development of programs not currently in place;
- Site inspections of various and written report with hazards noted and recommendations for improvement;
- Safety Training;
- Coach and mentor supervisors on safety management techniques;
- Develop internal protocols to maintain the safety program momentum including identification of resources required;
- Regular review of codes of safe work practices for the Injury & Illness Prevention Program; and
- Update and review written protocols