



DATE: August 20, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **AMENDMENT 1 TO CIVIC SOLUTIONS INC. PROFESSIONAL SERVICES AGREEMENT FOR CONTRACT PLANNING SERVICES**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 in the amount of \$89,760 to the Professional Services Agreement with Civic Solutions Inc. for contract planning services, and authorize the City Manager to execute the amendment.

BACKGROUND

In Spring 2014 the City entered into a Professional Services Agreement in the amount of \$50,000 with Civic Solutions Inc. focusing on expedited processing of priority development projects, CEQA review, and public outreach services associated with development proposals. Over the last three months, the contract employees have been assigned numerous entitlement proposals and have been successfully working with applicants toward project completion. The contract terminates upon all funds being expended. An amendment to add additional funds and an expiration date of June 30, 2015 will enable continuity of services. No changes to the hourly contract rates or contract employees are proposed in conjunction with this amendment to the Professional Services Agreement.

ANALYSIS

The continuation of the agreement with Civic Solutions Inc. is necessitated by consistent increases to the planning entitlement case workload over the past 12 months and to minimize midstream transfers of high-profile, complex projects to planners unfamiliar with the ongoing cases. Extending this agreement through Amendment 1 would allow for improved and responsive service to project applicants seeking development approvals. Projects currently under review by Civic Solutions Inc. include but are not limited to: The Inns at Buena Vista Creek, the Fed-Ex distribution facility

and Magnaflow at Ocean Ranch, as well as multiple residential entitlements along South Pacific Street.

Supplementing the Planning Division with contract services allows staff to more expeditiously evaluate pending applications such as: the Coca Cola expansion, Villa Storia, Melrose Heights and ongoing downtown project implementation. The cost to process planning entitlements can be partially recovered. Work performed under this contract is billable to Developer Deposit Accounts at approximately 50 percent of the total contract amount.

FISCAL IMPACT

The contract amendment will be paid from the Development Services, Planning Administration Account (450404101.5305) which has an available budget of \$147,602. Sufficient funds are available for continuity of services through June 30, 2015.

Revenue in the minimum amount of \$45,000 is anticipated to be generated by work under this contract. Developer Deposit revenue is transferred from the Developer Deposit Account 101.2076.0002 to the Planning Administration Entitlement Revenue Account 450404101.4426.0022.

The funding source for the contract amendments is the General Fund.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

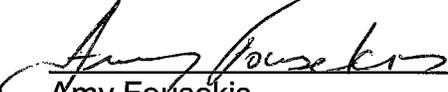
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve Amendment 1 in the amount of \$89,760 to the professional services agreement with Civic Solutions Inc. for contract planning services, and authorize the City Manager to execute the amendment.

PREPARED BY:



Amy Fousekis
Principal Planner

SUBMITTED BY:



Steven Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Marisa Lundstedt, City Planner
James Riley, Financial Services Director

MJ

JR

ATTACHMENTS:

1. Amendment 1
2. Professional Services Agreement

**CITY OF OCEANSIDE
AMENDMENT 1 TO
PROFESSIONAL SERVICES AGREEMENT**

PROJECT: Contract Planning Services (450404101)

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment"), dated August 20, 2014 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and CIVIC SOLUTIONS, INC. herein after designated as "CONSULTANT."

RECITALS

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement dated April 30, 2014, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein;

WHEREAS, the Development Services Department is in need of continued contractual planning services; and

WHEREAS, the parties desire to amend the Agreement to provide for changes and/or modifications to increase the contract by \$89,760.

AMENDMENT

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

1. SCOPE OF WORK: Hourly services for contractual planning services will continue as specified in the Agreement.
2. COMPENSATION: Total compensation for all work performed in accordance with this amendment shall not exceed \$89,760 for an extension up to June 30, 2015. Hourly billing rates will continue as specified in the Agreement.
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.

CIVIC SOLUTIONS, INC.
By: *Thomas G. Merrell*
Thomas G. Merrell, AICP
President

CITY OF OCEANSIDE
By: _____
Steven R. Jepsen, City Manager

Date: 8/5/14

Date: _____

By: *Thomas G. Merrell*
Thomas G. Merrell, AICP
Secretary

Date: 8/5/14

APPROVED AS TO FORM:

33-0689860
Employer ID No.

Robert J. Hamilton, ASST
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

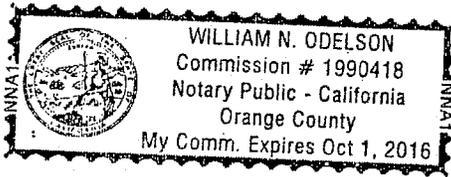
State of California

County of ORANGE

On 8-5-2014 before me, WILLIAM N ODELSON, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared THOMAS G MERRELL
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/hy/their authorized capacity(ies), and that by his/hy/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: [Handwritten 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 AMENDMENT TO AGREEMENT

Document Date: 8-5-2014 Number of Pages: 2

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

CITY OF OCEANSIDE**PROFESSIONAL SERVICES AGREEMENT****PROJECT: Contract Planning Services (450404101)**

THIS AGREEMENT, dated April 30 2014 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and CIVIC SOLUTIONS, INC., hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** Under the direction of the City Planner, CONSULTANT shall provide contractual general planning services to include the processing of development projects and ensuring compliance with Oceanside General Plan, Zoning Ordinance, California Environmental Quality Act, other City codes and all related City policies and procedures. General planning services include discretionary case processing, project development review, communication with applicants and the general public, preparation and presentation of staff reports, and attendance at meetings and public hearings as necessary.
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 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 CONSULTANT.** CONSULTANT'S relationship to the CITY shall be that of an independent CONSULTANT. 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. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall

Contract Planner Services

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 CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which requires 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. **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 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)

Combined Single 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 CONSULTANT 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 CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY promptly of all losses or

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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.

- 4.4 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.
- 4.5 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.
- 4.6 CONSULTANT 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 CONSULTANT 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 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.
- 4.9 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.
5. **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

Contract Planner Services

(\$1,000,000).

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

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law, 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 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 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.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$50,000. Services provided in accordance with this Agreement shall be billed at the following hourly rates:

Assistant Planner	\$65.00 per hour
Associate Planner	\$75.00 per hour
Principal Project Manager	\$95.00 per hour

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

8. **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.

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9. **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.
10. **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.

11. **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.
12. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing three (3) 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.

Contract Planner Services

13. **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.

CIVIC SOLUTIONS, INC.

CITY OF OCEANSIDE

By: *Thomas G. Merrell*
Thomas G. Merrell, AICP
President

By: *Steven R. Jepsen*
Steven R. Jepsen
City Manager

By: *Thomas G. Merrell*
Thomas G. Merrell, AICP
Secretary

APPROVED AS TO FORM:

33-0689860
Employer ID No.

Robert J. Hamilton, ASST.
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

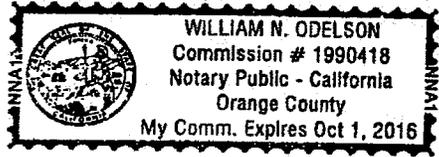
State of California

County of ORANGE }

On 4-25-2014 before me, WILLIAM N ODELSON, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared THOMAS G MERRELL
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]
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 Svc Agree

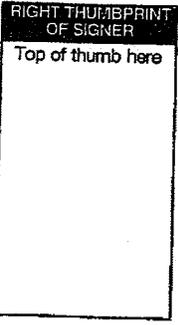
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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



Signer Is Representing: _____

Signer's Name: _____

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



Signer Is Representing: _____



RESOLUTION OF THE BOARD OF DIRECTORS

CIVIC SOLUTIONS, INC.

AUTHORIZING THE PRESIDENT TO EXECUTE BINDING CONTRACTS

WHEREAS, from time to time prospective clients require proof of board approval for its officers to bind the company to contracts as a part of requests for proposals; and

WHEREAS, the board has determined that, for such purposes, the appropriate evidence of its delegated authority to bind contracts shall be a resolution of the board;

NOW THEREFORE BE IT RESOLVED that Thomas G. Merrell, AICP, President and Chairman of the Board, is authorized to negotiate, enter into and execute contracts and agreements that are binding on the company.

Moved, seconded and approved by majority vote of the Board of Directors on September 14, 2006.

A handwritten signature in cursive script that reads "Thomas G. Merrell".

Thomas G. Merrell
Secretary