

STAFF REPORT



CITY OF OCEANSIDE

DATE: November 5, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT WITH NV5 FOR PUBLIC OUTREACH SERVICES**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council approve a Professional Services Agreement in an amount not to exceed \$165,000 with NV5 of San Diego, for public outreach services; and authorize the City Manager to execute the agreement.

BACKGROUND

On September 19, 2012, Council approved the original agreement with Atkins, North America for public outreach services. Seven firms were originally evaluated and selected for various types of work, based on their skills, capabilities, experience and knowledge within the industry.

On April 3, 2013, Council approved an agreement in an amount not to exceed \$105,000 with Atkins North America, for the Capital Improvement Program public outreach services.

On June 25, 2014, Council approved an additional agreement in an amount not to exceed \$100,000 with Atkins North America, for general public outreach services. Subsequently, the City was notified that the entire public affairs team at Atkins has left the company to work for NV 5, a competing firm, starting on September 8, 2014.

Presently, Atkins Public Affairs staff is conducting public affairs assistance on several notable projects, including the Myers-Tait Sewer line replacement, recycled Water messaging and coordination in the Ocean Hills area, the annual water quality report and calendar, and, perhaps most urgently, messaging related to the Stage 2 Drought. Because of the nature of the work performed by this team, their knowledge and experience with the City of Oceanside Water Utilities Department, and the importance of these projects, staff is recommending that a new Agreement with NV5, on a sole source basis, be approved by Council. The existing agreement with Atkins pertaining to public relations activities will be terminated, as direct by the City Attorney's office, upon approval of the new agreement with NV5.

ANALYSIS

The present situation is unique in that the entire public affairs team at Atkins is leaving to create a public affairs group with NV5. The City has had a relationship with NV5, aka Nolte for several years; currently, they are working with City staff to design the Lake Blvd Sewer replacement project. The public affairs group would continue their existing projects for the City, under the umbrella of NV5. These projects consist of:

- Clean Water and Recycled Water outreach and education
- Enhanced outreach development for Drought related publications, notices, media relations and programs.
- Miscellaneous Water and Sewer Projects outreach and education
- Capital Improvement Projects outreach and education during construction
- Consumer Confidence Report Calendar – Includes draft and design of 12 month calendar, full translation, development meetings, revisions, and final proofing for print production.
- Professional Photography Services: Provide as needed photography services for all related conservation events, and facilities, to support image inventory for Consumer Confidence Report Calendar and other related City public relations materials.
- Green Business Certification – Draft and design new Green Oceanside business guide, image development, window sticker design, banner design, news releases and media support.
- Miscellaneous Green Oceanside App Development: If needed, provide input, and technical development on enhanced engagement with both Green Oceanside App and City App.
- Miscellaneous events: Draft and design outreach materials (flyers, vendor applications, forms, press releases) and provide media support for community clean up events; water conservation workshops, and all Earth Month related events.

Staff has determined that with the Level 2 Drought declaration, it is important to note that additional funds beyond existing projects should be dedicated to this PSA for drought response outreach and education, in order to effectively meet our goals and mandate. Although the contract amount is at a level which might warrant the hiring of an in-house public relations staff person, the present contract allows for the hiring of staff as workload becomes heavy as well as wanes. Additionally, contracting through NV5 allows for other specialty areas to be added to a project as needed, including professional photographers, translators, and graphics design personnel.

FISCAL IMPACT

The FY 2014/15 adopted budget for the Water and Sewer Funds have budget available as follows:

Name	Fund	Available Budget	Allocated Amount
Water Admin	750010711.5305	\$98,806	\$50,000
Sewer Admin	800010721.5305	\$76,000	\$25,000
Waste and Recycling Admin	700010731.5355	\$38,800	\$38,800
Myers-Tait Sewer Replacement	909831500726.5703.10610	\$59,474	\$41,200
N San Diego County Recycled Water	908122400710.5305.10400	\$27,500	\$10,000
		Total	\$165,000

The fees will be divided between the water and sewer accounts as indicated in the table and therefore, adequate funds are available for the project. The Water Admin operating account is funded from Water Sales (1711.4471.0001), Sewer Admin is funded by Sewer Service and Flow Fees (1721.4476.0001 and 1721.4476.0002). Waste and Recycling Admin is funded by the Contract Trash-Admin account (700010731.4481.0003). Myers Tait is funded primarily by Development Expansion Fees (1727.4427.0001) and The N San Diego County Recycled Water project is funded through a combination of water sales and grant funds.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

The Utilities Commission approved staff's recommendation at its regularly scheduled meeting on September 16, 2014.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATIONS

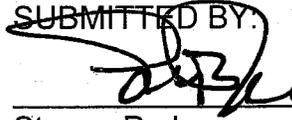
Staff and the Utilities Commission recommend that the City Council approve a Professional Services Agreement in an amount not to exceed \$165,000 with NV5 of San Diego, for public outreach services; and authorize the City Manager to execute the agreement.

PREPARED BY:



Jason Dafforn
Water Utilities Division Manager

SUBMITTED BY:



Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Assistant City Manager

Cari Dale, Water Utilities Director

James R. Riley, Financial Services Director







Exhibit A – Professional Services Agreement

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

**PROJECT: AS-NEEDED PUBLIC OUTREACH SERVICES – [750010711,
800010721, 700010731, 909831500726, 908122400722]**

THIS AGREEMENT, dated September 16, 2014 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and NV5, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The CONSULTANT desires to provide as-needed public outreach services as more particularly described in the CONSULTANT'S proposal dated September 2, 2014, attached hereto and incorporated herein as Exhibit A.
2. **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. 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.
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 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. **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.

As-Needed Public Affairs Services –
[750010711, 800010721, 700010731,
909831500726, 908122400722]

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)

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 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 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.

As-Needed Public Affairs Services –
[750010711, 800010721, 700010731,
909831500726, 908122400722]

- 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 (\$1,000,000.00).

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

As-Needed Public Affairs Services –
[750010711, 800010721, 700010731,
909831500726, 908122400722]

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 \$165,000.

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 by June 30, 2015.

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.

As-Needed Public Affairs Services –
[750010711, 800010721, 700010731,
909831500726, 908122400722]

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 thirty (30) days written notice to the other party. If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

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.

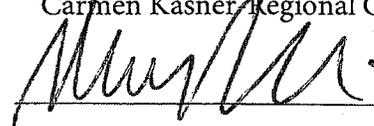
IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on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

NV5
Corporation

CITY OF OCEANSIDE

By: 
Name/Title
Carmen Kasner Regional Chief Executive

By: _____
Steven R. Jepsen, City Manager

By: 
Name/Title
MaryJo O'Brien-Secretary

APPROVED AS TO FORM:


City Attorney

94-2706173

Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

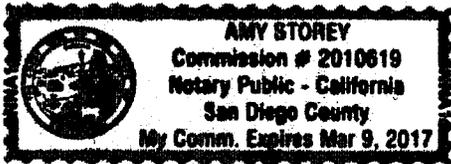
CIVIL CODE § 1189

State of California

County of San Diego }

On Sept. 16, 2014 before me, Amy Storey, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Mary Jo O'Brien & Carmen Kasner
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: Amy Storey
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 Services Agreement

Document Date: 9/16/2014 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: _____

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: _____



September 2, 2014

John McKelvy
City of Oceanside
300 North Coast Hwy
Oceanside, CA 92054

Dear Mr. McKelvy:

Nolte Associates, Inc (NV5) is thrilled to now be able to provide additional services to the City of Oceanside (City). We are adding staff that have been working for the City for a number of years and that have specific expertise in Public Affairs. We would like this transition from their current company to be as seamless as possible for the City. NV5 holds an active contract with the City doing work for the Utilities Department.

We would propose the following rates for Public Affairs work for the City. This work would be performed by the staff that is currently working for the City with another consultant.

Senior Project Manager/Project Manager - \$130
Project Manager \$120
Assistant Project Manager \$95 to \$115
Community Relations Strategist/Strategic Guidance \$120
Media Relations/Government Affairs \$95 to \$115
Graphic Design \$95
Account Coordinator/Support \$75

Again we are thrilled to be able to work with Oceanside in the past and we look forward to being of service in these new areas of expertise.

If you have any questions, please call me at 858.385.2131 or e-mail me at carmen.kasner@nv5.com.

Sincerely,

Nolte Associates, Inc. (NV5)

A handwritten signature in black ink that reads 'Carmen C. Kasner'.

Carmen Kasner

OFFICES NATIONWIDE

15070 AVENUE OF SCIENCE, STE 100 | SAN DIEGO, CA 92128 | WWW.NV5.COM | OFFICE 858.385.0500 | FAX 858.385.0400

CORPORATE SOCIAL RESPONSIBILITY | AIR QUALITY | INFRASTRUCTURE | ENERGY | PUBLIC WORKS | TRANSPORTATION | ENVIRONMENTAL