



---

DATE: December 3, 2014  
TO: Honorable Mayor and City Councilmembers  
FROM: Water Utilities Department  
SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR AS-NEEDED STRUCTURAL ENGINEERING SERVICES FOR CAPITAL IMPROVEMENT PROJECTS**

**SYNOPSIS**

Staff and the Utilities Commission recommend that the City Council approve a Professional Services Agreement with Bayez & Patel, Inc. of San Diego in an amount not to exceed \$100,000 for as-needed Capital Improvement Projects structural engineering services; and authorize the City Manager to execute the agreement.

**BACKGROUND**

Fiscal Year 2014-15 is a particularly busy year for the Water Utilities Department Capital Improvement Program (CIP), with over \$33 million in water projects, and over \$22 million in sewer projects. To complete all of these projects, City and Contract staff has assumed more construction management and inspection responsibilities. To supplement the proper inspection of capital projects, special inspection and testing services are required.

Contracting out specialty functions such as surveying, material sampling and testing, structural inspection, and electrical inspections to name a few, is a cost-effective way to supplement in-house and contract project management services with licensed and certified inspectors, allowing staff to focus on completing the Department's ambitious CIP project schedule.

**ANALYSIS**

Because of the specialized nature of the services required to support Project Managers, it is necessary to outsource some functions, which would be cost prohibitive to maintain in-house. Various firms were contacted and evaluated for structural engineering services. Patel & Bayez was selected based on their technical skills, capabilities, experience, knowledge of the City's existing facilities, pricing and competence within the industry.

**FISCAL IMPACT**

The total of this contract is \$100,000. The cost will be split between the Water fund account 750771712.5326 and the Sewer fund account 800812722.5326. There is currently \$821,000 budget available in the Water fund account and \$626,000 budget available in the Sewer Fund account. Therefore, there are sufficient funds for the contracts.

Water Sales and Water Meter Charges for service in the Water Fixed Asset Replacement accounts are the funding sources for the Water projects. Sewer Service and Sewer Flow Fees are the funding sources for the Sewer projects.

**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 October 21, 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 with Bayez & Patel, Inc. of San Diego in an amount not to exceed \$100,000 for as-needed Capital Improvement Projects structural engineering services; and authorize the City Manager to execute the agreement.

PREPARED BY:

  
\_\_\_\_\_  
Jason Dafforn  
Interim Water Utilities Director

SUBMITTED BY:

  
\_\_\_\_\_  
Steven R. Jepsen  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant City Manager  
  
James R. Riley, Financial Services Director

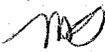
  
\_\_\_\_\_  
  
\_\_\_\_\_

Exhibit A – Professional Services Agreement

**CITY OF OCEANSIDE**

**PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: AS-NEEDED STRUCTURAL ENGINEERING SERVICES -  
[750010721 & 800010822]**

THIS AGREEMENT, dated \_\_\_\_\_, 2014 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and BEYAZ & PATEL, INC., hereinafter designated as "CONSULTANT."

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. **SCOPE OF WORK.** The CONSULTANT desires to provide as-needed structural engineering services as more particularly described in the CONSULTANT'S proposal dated October 14, 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 Engineer. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the City Engineer. 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.

**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
---------------------------------------	--------------

\*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'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.

**4.4** 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

As-Needed Structural Services  
[750010721 & 800010822]

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 (\$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 CONSULTANT'S work, including the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees founded upon, resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

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

7. **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and other documents, prepared or provided by the CONSULTANT under this Agreement shall be the property of the CITY. The CITY agrees to hold the CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the plans and specifications and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computation and other documents, prepared or provided by the CONSULTANT. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting their participation in this project.
8. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$100,000.

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.

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 by June 30, 2015

10. **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. **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. **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.** 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.

As-Needed Structural Services  
[750010721 & 800010822]

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.

BEYAZ & PATEL, INC.

CITY OF OCEANSIDE

By: Subhash Patel

By: \_\_\_\_\_

Name/Title  
**SUBHASH PATEL**  
**PRESIDENT**

Steven R. Jepsen, City Manager

Date: 10-21-2014

Date: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM:

Name/Title

Date: \_\_\_\_\_

Robert J. Hamilton, Esq.

City Attorney

\_\_\_\_\_  
Employer ID No.

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

# California All-Purpose Acknowledgment

State of California

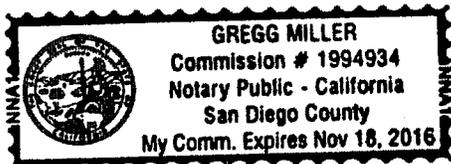
County of San Diego

On Oct 21, 2014 before me, Gregg Miller, Notary Public, personally appeared SUBHASH PATEL

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

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: 10/21/14 Number of Pages: 6

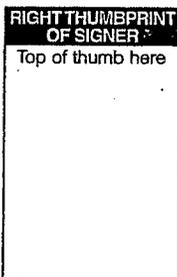
Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s)

Signer's Name: SUBHASH PATEL Signer's Name: \_\_\_\_\_

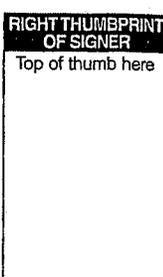
- Individual
- Corporate Officer - Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: PRESIDENT

Signer is representing: \_\_\_\_\_



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

Signer is representing: \_\_\_\_\_





**Beyaz & Patel Inc.**  
*Consulting Engineers*

16935 West Bernardo Drive, Suite 100, San Diego, CA 92127 (858) 451-0374 Fax: (858) 271-9932

October 14, 2014

Mr. Jason Dafforn, P.E. Water Utilities Division Manager  
Water Utilities Department  
City of Oceanside  
300 North Coast Highway  
Oceanside, CA 92054

**Reference: Proposal for As-Needed Structural Services**

Dear Mr. Dafforn:

Beyaz & Patel (B&P) is pleased to provide a proposal to provide professional As-Needed Structural Services to the City of Oceanside Water Utilities Department. B&P understands these services will assist the Water Utilities Department in executing their extensive CIP program.

**As-Needed Structural Services**

B&P understands that the Water Utilities Department has an aggressive upcoming CIP. In order to implement this CIP, the Water Utilities Department is requesting services from a professional Structural Engineering Consulting Firm who can perform design and construction management support services. The scope of services includes meeting with Water Utilities Department's Project Managers to support each individual CIP project. Each project will have an individual scope of services and fee developed and submitted for the City's review and acceptance.

B&P has attached our current rate schedule which will be the basis for each Task Order's Time and Materials (T&M) fee proposal. The total amount for this As-Needed Structural Contract is \$100,000.

**Statements:** B&P will perform the work on a task by task basis as approved by the City.

B&P has reviewed the City's Professional Service Agreement and takes no exceptions.

***B&P is available and ready to work for the City of Oceanside.*** While on this assignment Mr. Subhash Patel will serve as the point of contact for the City. We sincerely appreciate the opportunity to submit this proposal and develop a strong working relationship with the City.

Sincerely,

A handwritten signature in black ink that reads 'Subhash Patel'.

Subhash Patel, PE, SE  
*Executive President*

**BEYAZ & PATEL, INC.**  
**HOURLY BILLING RATE SCHEDULE**  
**Fiscal Year 2014**

<b>Professional Classification</b>	<b>Hourly Billing Rates</b>
Managing Engineer	\$214.00
Senior Engineer	\$149.00
Engineer	\$121.00
<b>Technical Classification</b>	
CAD Technician	\$112.00
<b>Administrative Classification</b>	
Clerical/Word Processing	\$67.00

Notes:

1. Hourly billing rates are adjusted annually at the beginning of the fiscal year.
2. Other Direct Costs will be billed at cost.
3. Mileage will be billed at Federal standard mileage rate.