

STAFF REPORT*CITY OF OCEANSIDE*

DATE: December 3, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR AS-NEEDED LAND SURVEYING SERVICES FOR CAPITAL IMPROVEMENT PROJECTS**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council approve a Professional Services Agreement with Right-of-Way Engineering Services, Inc. of Oceanside in an amount not to exceed \$75,000 for as-needed Capital Improvement Projects surveying 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 surveying services, and Right-of-Way Engineering 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 contract amount is \$75,000. 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.

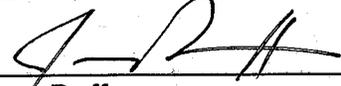
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATIONS

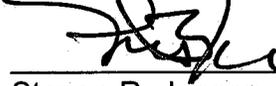
Staff and the Utilities Commission recommend that the City Council approve a Professional Services Agreement with Right-of-Way Engineering Services, Inc. of Oceanside in an amount not to exceed \$75,000 for as-needed Capital Improvement Projects surveying services; and authorize the City Manager to execute the agreement.

PREPARED BY:



Jason Dafforn
Interim Water Utilities Director

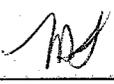
SUBMITTED BY:



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: ON-CALL SURVEYING SERVICES – [750771712 & 800812722]

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 RIGHT OF WAY ENGINEERING SERVICES, INC., hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The CONSULTANT desires to provide On-Call Surveying services as more particularly described in the CONSULTANT'S proposal dated September 16, 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

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 \$75,000.

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 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.

On-Call Surveying Services -
[750771712 & 800812722]

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.

RIGHT-OF-WAY ENGINEERING

CITY OF OCEANSIDE

By:  / president
Name/Title

By: _____
Steven R. Jepsen, City Manager

Date: September 23, 2014

Date: _____

By: _____
Name/Title

APPROVED AS TO FORM:

Date: _____

 ASST.
City Attorney

33-0290056
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

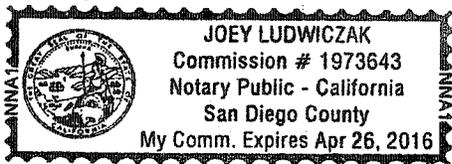
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California

County of SAN DIEGO }

On SEPT 23, 2014 before me, JOEY LUDWICZAK, NOTARY PUBLIC
Date Name and Title of the Officer

personally appeared MICHAEL SCHLUMBERGER
Name(s) of Signer(s)



Place Notary Seal Above

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

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Partner — Limited General Partner — Limited General

Individual Attorney in Fact Individual Attorney in Fact

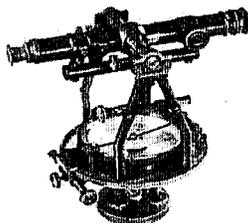
Trustee Guardian or Conservator Trustee Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

Right-Of-Way Engineering Services, Inc.

Land Surveying



September 16, 2014

Mr. Jason Dafforn
Oceanside Water Utilities
300 North Coast Hwy
Oceanside, CA 92054

Subject: On-call survey services for the City of Oceanside Water Utilities Department.

Dear Mr. Dafforn,

Right-of-Way Engineering Services, Inc. proposes to enter into an as-needed professional services agreement to provide professional surveying services with the City of Oceanside's Water Utilities Department. After careful review of your needs and consideration of our history of successful public works projects for neighboring cities and water districts, Right-of-Way Engineering believes we have a strong understanding of the requirements and challenges that may be faced while provide Surveying Services for the City of Oceanside.

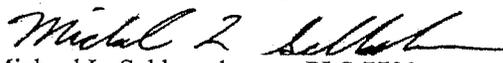
Right-of-Way Engineering Services specializes in all aspects of surveying, we are unique in our qualifications for this agreement for many reasons:

- We concentrate all of our efforts serving municipalities and professional design firms on public works projects. Our extensive experience working with municipalities gives us an in depth understanding of their requirements and processes.
- Professional surveying, mapping and right of way services are the main focus of our company. By focusing our resources on specific disciplines we have refined our operations to provide more personal, detail oriented service and a better final product.
- We currently have established control networks within the City of Oceanside and a right of way data base that covers portions of the City.
- Being a mid-size, local survey firm allows us the flexibility to expedite your project, provide quality one on one service, deliver top quality products, keep our overhead low and our fees reasonable.

Our company, having extensive experience in the area, will provide the personnel, equipment, flexibility and the knowledge required to guarantee your satisfaction with any survey task or project assigned to us.

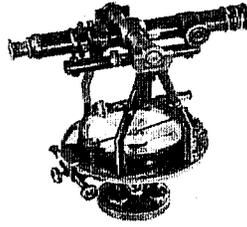
We truly appreciate our established business relationship with the City of Oceanside Water Utilities Department. I look forward to extending our services to provide seamless projects of the highest quality. Attached are our agreed upon hourly rates. If you have any questions, concerns or discussion regarding our proposal please do not hesitate to contact myself at (760) 637-2700 or mikes@roweng.net

Thank you,
Right-of-Way Engineering Services, Inc.


Michael L. Schlumpberger, PLS 7790
President

Right-Of-Way Engineering Services, Inc.

Land Surveying



SCHEDULE OF HOURLY RATES

| | |
|---|-------------|
| 2 Person Field Survey Crew Construction Staking Topography Surveys Boundary Surveys Field surveys | \$185.00/Hr |
| 3 Person Field Survey Crew With GPS Equipment, 3 Vehicles and Radios | \$310.00/Hr |
| Survey Office Technician Exhibits Legal Description | \$90.00/Hr |
| CAD Technician | \$90.00/Hr |
| Survey Supervisor | \$90.00/Hr |
| Licensed Land Surveyor Document review Map Checking | \$120.00/Hr |
| Clerical | \$55.00/Hr |
| Title reports, aerial photogrammetry, potholing, utility tracing | Cost + 5% |