



AGENDA REPORT
SAN CLEMENTE CITY COUNCIL MEETING
 Meeting Date: June 19, 2012

Agenda Item 6I
 Approvals: _____
 City Manager _____
 Dept. Head _____
 Attorney _____
 Finance _____

Department: Finance and Administrative Services
Prepared By: Thomas Rendina, Municipal Services Manager

Subject: *FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT FOR MONTHLY WATER METER READING.*

Summary: The City executed a Professional Services Agreement with Alexander's Contract Services Incorporated to perform monthly meter reading services effective July 1, 2007. The original agreement provided for a five-year contract, which expires on June 30, 2012.

Alexander's has performed the meter reading services to the satisfaction of the City during the original contract period. Under terms of the existing agreement, the monthly meter reading charge is adjusted annually by the Consumer Price Index. Alexander's proposed a modification to this term, whereby the annual charge would increase by a fixed amount rather than the CPI, which averaged 2.2% over the past three years. The current rate is \$0.776 per read. A fixed increase of \$0.03 was proposed by Alexander and \$0.024 was ultimately agreed upon for the first year of the contract and \$0.025 for years two and three. Under the modified terms, the cost per read is as follows;

	<u>Cost per meter</u>	<u>% increase</u>
• Year 1	\$0.800	3.1%
• Year 2	\$0.825	3.1%
• Year 3	\$0.850	3.0%

Because gasoline prices have increased dramatically over the past year, Alexander's desires to have a "fuel surcharge" provision in the contract, to adjust their fixed monthly meter read charge, should gasoline prices exceed \$5.50 per gallon. Staff believes the fuel surcharge provision is fair and supports that addition. The provision provides for both increases and decreases, based on the cost of gasoline over a six-month timeframe.

Alexander's created a "Certified Read" program late last year which provides a photo of the meter, certifying the date of the read and the actual display of the meter. The City participated in a three month trial of the service and found the program to be of benefit. During the trial period, the number of re-reads the City performed was reduced from an average of 90 reads per day to 6 reads per day. This significantly reduced the workload for utility personnel during the trial program. Staff submitted a Decision Package for the 2013 Budget to pay for this new program, which costs \$1.00 per Certified Read. During the trial program, the City averaged 1,200 Certified Reads per month.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to sign the First Amendment to the Professional Services Agreement for Water Meter Reading Services by and between the City of San Clemente and Alexander's Contract Services Incorporated.

Fiscal Impact: None. Funds budgeted in the 2013 budget.

Attachments: First Amendment to the Professional Services Agreement for Meter Reading Services.

Notification:

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**FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT FOR
MONTHLY WATER METER READING**

This First Amendment to Professional Services Agreement for Monthly Water Meter Reading (this "First Amendment") is made and entered into on this 19 day of June, 2012, by and between the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), and Alexander's Contract Services Incorporated ("Contractor").

RECITALS:

- A. City and Contractor entered into that certain Professional Services Agreement for Monthly Water Meter Reading (the "Agreement") on March 15, 2007.
- B. City and Contractor desire to amend the Agreement in the manner provided herein.

COVENANTS:

Section 1: The Agreement is hereby amended by extending the term thereof for an additional three year period, commencing on July 1, 2012 and expiring June 30, 2015. In addition to the services to be performed by Contractor as referenced in Exhibit "A" to the Agreement, Contractor shall also perform those services described in Exhibit "A" to this First Amendment, which exhibit is attached hereto and incorporated herein by this reference.

Section 2: Section 1.8 of the Agreement - Hiring of Illegal Aliens Prohibited, is hereby replaced in its entirety with the following:

1.8 Hiring of Illegal Aliens Prohibited CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States. CONTRACTOR shall require all of its subcontractors to similarly verify that all persons employed by such subcontractors are eligible to work in the United States.

Section 3: Section 5.1 of the Agreement – Indemnification, is hereby replaced in its entirety with the following:

5.1 Indemnification

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A "LICENSED DESIGN PROFESSIONAL" AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:

To the fullest extent permitted by law, CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees (collectively, the "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the "Liabilities"). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A "LICENSED DESIGN PROFESSIONAL":

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR's officers, agents, employees, representatives, or subcontractors [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a "Licensed Design Professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

Section 4: Section 5.2 of the Agreement – Insurance, is hereby replaced in its entirety with the following:

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5.2 Insurance

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

Neither the CITY or any of its respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:
- (1) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by CITY's Risk Manager for all coverages except surety.
 - (2) name and list as additional insureds CITY and CITY's officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.
 - (3) specify it acts as primary insurance and that no insurance held or owned by CITY shall be called upon to cover a loss under said policy;
 - (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"

- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: _____

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

Section 5: The following provision is added as a new Section 1.11 to the Agreement:

1.11 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or

acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

Section 6 : Except as expressly amended by this First Amendment, the remaining portions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

Approved as to form:
RUTAN & TUCKER, LLP

City Attorney

Finance Authorization

("CONTRACTOR")

By: _____

Its: _____

Dated: _____, 20__

EXHIBIT "A"

Fee Schedule

Base charge for meter reads:

July 1, 2012 – June 30, 2013	\$0.800 per read
July 1, 2013 – June 30, 2014	\$0.825 per read
July 1, 2014 – June 30, 2015	\$0.850 per read

Fuel Surcharge

A fuel surcharge shall be applied if gasoline prices equal or exceed \$5.50 per gallon for a continuous six (6) month period during the term of this Second Amendment as follows:

Following six continuous months of prices equal to or in excess of \$5.50 per gallon, a 1% of the base meter charge then in effect shall be applied and an "adjusted base meter charge" shall be charged thereafter. For each additional \$0.50 increment above the \$5.50 price per gallon price, an additional 1% of the adjusted base meter charge shall be added.

If a fuel surcharge has been applied, as defined above, and the price per gallon decreases in \$0.50 increments for a continuous six month period, each 1% surcharge previously applied per \$0.50 increment shall be removed.

Certified Reads

Cost per Certified Read	\$1.00
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