



Meeting Date: 06 / 14 / 11

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Ralph Alamillo *RA* Agenda Item No. **I-10**

Reviewed By: City Manager *JEB* City Attorney *SMF* Finance *JC* Other (Specify) _____

DATE: June 2, 2011

TO: City Council

FROM: Michael Henderson, General Services Superintendent
City Manager's Office *MH*

SUBJECT: First Amendment to Agreement No. 4761-09-CM with Penfield and Smith Engineers for the College Park Phase IC Project

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute a First Amendment to Agreement No. 4761-09-CM with Penfield and Smith Engineers in the amount of \$42,750 for the College Park Phase IC Project, located at 3250 South Rose Avenue.
2. Approve Special Budget Appropriation.

DISCUSSION

The College Park Phase IC Project started construction February 2011 and is approximately 30% complete. The project consists of five lighted Soccer fields, concession building, restrooms, maintenance facility, extension of the South parking lot and perimeter road, landscaping and irrigation, improvements to the existing barbeque area, lights at the Bedford Pinkard Skate Park and enhancement to the wetland area. The current design includes a traffic signal light at the main entrance of the park on Rose Avenue. There have been requests from Oxnard College, the Oxnard Union High School District and the City's Traffic Engineer to relocate the signal from the main entrance to Gary Drive, which is on the southwest corner of the park. Reasons for the relocation are due to safety concerns for pedestrian traffic from the existing Channel Islands High School facility to Oxnard College. The City's Traffic Engineer also prefers the location due to better traffic flows from proper spacing between the traffic signal lights at Raiders Way and Bard Road. This amendment also includes the modification to tie-in the pedestrian sidewalk from the college to the park, and added waterline to the detention basin. The Agreement term is being extended from December 31, 2011 to June 30, 2012.

FINANCIAL IMPACT

Out of the total cost for the agreement, \$2,250 will be funded from existing Measure "O" funding (Account no. 104-5723-826-8204 Project #055703) and remaining \$40,500 will be funded from new appropriation from fund balance of Circulation System Improvements Fees (Fund 354).

First Amendment to Agreement No. 4761-09-CM with Penfield and Smith
Engineers for the College Park Phase 1C Project
June 2, 2011
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Attachment #1 - First Amendment
Attachment #2 - Original Agreement
Attachment #3 – Special Budget Appropriation

FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES

This First Amendment ("First Amendment") to the Agreement for Consulting Services ("Agreement") is made and entered into in the County of Ventura, State of California, this 19th day of April, 2011, by and between the City of Oxnard, a municipal corporation ("City"), and Penfield and Smith Engineers ("Consultant"). This First Amendment amends the Agreement entered into on April 6, 2009, by City and Consultant.

City and Consultant agree as follows:

1. In Section 12 of the Agreement, the phrase "will expire on December 31, 2011" is deleted and replaced with the phrase, "will expire on June 30, 2012".
2. In Section 14 of the Agreement, the figure "\$498,000.00" is deleted and replaced with the figure "\$540,750.00".
3. As so amended, the Agreement remains in full force and effect.

CITY OF OXNARD

CONSULTANT:

Dr. Thomas E. Holden, Mayor



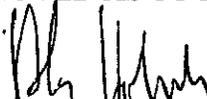
Penfield and Smith Engineers
Agent: PATRICK J. REEVES, Vice Pres.

ATTEST

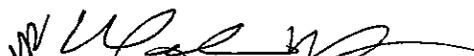
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:



Alan Holmberg, City Attorney



James Cameron, Risk Manager

DEPARTMENTAL APPROVAL AS TO CONTENT AND AMOUNT:



Michael Henderson, Superintendent
General Services



Edmund F. Sotelo, City Manager

ATTACHMENT NO. 1

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EXHIBIT A

In response to your request, we are pleased to submit this proposal for civil engineering, and surveying services to prepare construction documents for the relocation of the traffic signal to Gary Drive and the walkway improvements connecting Oxnard College and the College Park.

UNDERSTANDING OF PROJECT REQUIREMENTS

It is our understanding that the City of Oxnard would like to relocate the traffic signal from the south entrance to College Park to Gary Drive and provide ADA ramps at the intersection. The signal will benefit Oxnard College and the Oxnard School District. A pedestrian walkway is proposed on the south end of the park which will connect Oxnard College to the College Park. The walkway will include landscaping, irrigation and pedestrian lighting. The improvements shall be incorporated into the current College Park Phase 1C plans. In addition, the City is interested in adding a waterline into the detention basin to fill the wetland during the summer months. The outlet structure will require a valve to keep water in the wetland while filling.

Penfield & Smith will provide services from RJM Design group for irrigation and landscape related to the walkway improvements.

Based on our understanding of the project requirements, we propose the following scope of services:

SCOPE OF WORK

Topographic Survey & Mapping

1. Perform field survey for topographic mapping purposes for the Gary Drive Signalization only, including location of visible surface utility features and critical join points in pavement and other hardscape features. The topographic data will be incorporated into an AutoCAD drawing to be used as the project base map. Perform utility research for all public and private utilities located within the project limits.
2. Provide detailed survey of the 4 corners on Gary drive and update topo base map.
3. Provide legal descriptions if easements are required at Gary Drive and at the proposed pedestrian walkway location.

Construction Documents

1. Prepare demolition plan showing all existing features which must be removed.
2. Prepare final grading, drainage and paving plans including:
 - a. Prepare Grading Plans at a 1" = 20' scale. The plan will show horizontal and vertical information for curbs, gutters, and paving surfaces
 - b. Provide sections and details for the walkway, drainage and perimeter conditions as needed.
 - c. Revise drawing to show water line into the detention basin. Revise grading and water plans. Provide detail on the outlet structure.
3. Prepare signalization and signing and striping plans including:
 - a. Signing and striping plans at a scale of 1"=20' or larger for the cross walk at Gary drive.
 - b. Signage is limited to traffic regulatory, warning and guide signs.
 - c. Traffic Signalization plans

ATTACHMENT NO. 1

PAGE 2 OF 6

- d. Coordination with SCE to identify service point of connection.
- e. Incorporate revisions into the College Park Phase 1C plans.
- 4. Prepare construction cost estimates including:
 - a. Update Engineer's opinion of Probable Construction Costs
- 5. Prepare civil special provisions for project book specifications including:
 - a. Review and provide update to the project specifications.

Construction Phase Services.

- 1. Review submittal for the additional signal at Gary Drive and the water line at the wetland
- 2. Review submittals related to the new walkway improvements
- 3. Update project plans pre contractor provided as-built drawings.

SERVICES NOT INCLUDED

The following services and all other services not specifically listed herein are excluded:

- 1. Title Company reports, services and fees.
- 2. Government and Public Agency fees.
- 3. Due diligence studies or determinations.
- 4. ALTA surveys and record of survey.
- 5. Dry utilities design (such as gas, telephone, electric, or cable T.V. systems).
- 6. Wet utilities design (such as water, recycled water, sewer, or storm drain).
- 7. Any potholing of the site's existing utilities.
- 8. Soils/geotechnical investigation and report.
- 9. Environmental assessments or documents.
- 10. Architectural, landscape, structural or electrical design.
- 11. Construction Phase Services
- 12. Reimbursable expenses, such as photocopies, postage, shipping/delivery, mileage, prints, maps/documents.
- 13. Services by consultants other than Penfield & Smith.
- 14. Off site improvements within the public Right-of-Way.
- 15. Street Improvements.
- 16. SQUIMP requirements.
- 17. Preparation of Storm Water Pollution Prevention Plan (SWPPP) and/or NOI. Since the project is less than one (1) acre in size and the proposed work does not incorporate new construction, a General Construction Activity Permit NOI and a Storm Water Pollution Prevention (SWPPP) Plan should not be required.
- 18. Items not listed in this proposal.
- 19. Preparation of site geometric control plan.
- 20. Submittal to public agencies other than those specifically mentioned.

CLIENT TO PROVIDE

Client or co-consultant at Client's direction shall provide the following items to Penfield & Smith.

- 1. Access to the site to perform engineering investigation.
- 2. Support with Public Agency document signatures and fees.
- 3. Pavement section recommendations from the geotechnical engineer.
- 4. All necessary reports to perform our service.
- 5. Landscape Architecture and Architectural services.

PROPOSED FEE AND METHOD OF PAYMENT

Our proposed services will be performed on a time and materials, not to exceed basis and shall be billed monthly at the rates then in effect. Charges for "time" include professional, technical and clerical support services provided by Penfield & Smith. "Materials" include all reimbursable expenses, such as photocopies, postage, shipping/delivery, mileage, plots, prints, maps/documents and outside consultant fees.

Payment is due on receipt of statements (net 30 days). Unpaid account balances are subject to a finance charge which will be the lesser of one and one-half percent (1 ½ %) per month or a monthly charge not to exceed the maximum legal rate. This fee shall be applied to any unpaid balance commencing thirty days after the original billing. If an account is unpaid and would be subject to a finance charge, we may consider this as constructive notice to suspend work.

Based on our understanding of your requirements and our experience with similar projects, we estimate that the fee required for our services will be approximately **\$42,750**. The following is the fee breakdown for each phase:

Gary Dr. Traffic Signal Modification	\$30,000
Walkway Improvements	\$10,500
Add waterline to detention basin	\$2,250
Total	\$42,750

ADDITIONAL SERVICES

Services performed outside the scope of this agreement require written approval prior to performance of the work. Design changes by Owner/Client or designee after the start of design shall be considered additional services. Any work requested by Owner/Client that is outside the scope of this agreement will be identified by Penfield & Smith as such, and a fixed fee or not-to-exceed amount will be agreed upon prior to the start of the additional work. Compensation for additional services shall be in accordance with Exhibit "A", Penfield & Smith's Billing Rate Schedule currently in effect.

TIME OF PERFORMANCE

Based on our current workload, we estimate that work can begin in approximately four (4) week following receipt of the signed agreement. All support activities will be pursued directly in accordance with a mutually acceptable schedule which will be arranged with you.

AUTHORIZATION

Should you require additional information or wish to discuss this proposal further, please give me a call at (805) 981-0706 x112. If our proposal is satisfactory, please issue a standard consultant agreement that we can execute. Our current fee schedule is attached.

Thank you for considering Penfield & Smith for this project.

PENFIELD & SMITH

EXHIBIT C

PROJECT COST ESTIMATE (WITH PREVAILING WAGES)

Project No.: 17044.02
 Description: Traffic Signal Relocation to Gary Drive
 Client: City of Oxnard
 Date: April 8, 2010
 File Name: 201103021-College Park-Amendment#1 Chr E-proposal.doc

Prepared by: SC
 Office: 2
 Billing Type: T&M

PENFIELD & SMITH
 1327 Del Norte Road, Suite 200
 Camarillo, CA 93010
 (805) 981-0706

Prevailing Wages (y/n): Y

TASK	Hours										TOTAL HOURS	LABOR COST			
	Principal Engineer	Senior II Engineer	Assoc Engineer	Assist Engineer	Tech Support	Principal Surveyor	Assoc Surveyor	Asstt Surveyor	2-Man Survey						
1															
Design Development															
Survey		2										\$4,440			
Prepare Easement Documents		2										\$3,840			
Project Coordination Meeting (2)		6										\$960			
Coordination with SCE		8										\$1,760			
Preliminary Layout		8										\$6,860			
Submittal (1)	0.5	4	4.15									\$1,270			
2															
Construction Documents															
Final Civil	6	8	24									\$5,460			
Update specification	2	2	4									\$760			
Engineers Estimate	2	4	4									\$1,280			
3															
Post Design Services															
Submittal Review	2	2	4									\$1,200			
As-built	2	2	4		2							\$970			
Support during construction	4	4	4									\$1,160			
4															
Walkway Extension															
Survey															
Prepare Easement Documents		2										\$1,200			
Design Development		2	2	1.75	1.5							\$870			
Coordination Meeting (2)		2	2		1							\$385			
Submit Design for review		2	2		1							\$645			
Construction Documents		3	3									\$870			
Final Documents submittal		2	2		1							\$645			
Support during Construction		2	4									\$840			
As-Built		2	2		1							\$645			
5															
Water line into Detention Basin															
Revise outlet structure			2									\$260			
Revise water and grading plans		1.14	3.75									\$670			
Meet with the City for comments		2										\$320			
Finalize and Issue delta		2	2									\$260			
Support during construction		2	1									\$450			
As-Built		1	1									\$290			
TOTALS	20.5	65.1407	108.9	9.75	7.5					12	22	14	8	267.791	\$88,350
Classification															
12	Principal Engineer	180.00	19	Principal Surveyor	\$/hr	180.00									
11	Senior II Engineer	160.00	16	Associate Surveyor		130.00									
9	Associate Engineer	130.00	15	Assistant Surveyor		110.00									
8	Assistant Engineer	110.00	21	Two-man Party		245.00									
43	Technical Support	65.00													
Average Rate:		143.207													
Expenses											Cost	Billing Factor	Reimbursables	Consultant	
FJM											\$4,000	1.10		\$4,400	
Blueprints												1.15		\$0	
Travel												1.15		\$0	
Mail												1.15		\$0	
Telephone												1.15		\$0	
Photocopies												1.15		\$0	
Photographs												1.15		\$0	
Grand Total =											\$0		\$0	\$4,400	
Grand Total =														\$42,750	

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Consulting Services ("Agreement") is made and entered into in the County of Ventura, State of California, this 6th day of April, 2009, by and between the City of Oxnard, a municipal corporation ("City"), and Penfield and Smith Engineers ("Consultant").

WHEREAS, City desires to hire Consultant to perform certain professional services specified herein as engineering and land surveying services; and

WHEREAS, Consultant represents that Consultant and/or Consultant's personnel have the qualifications and experience to properly perform such services:

NOW, THEREFORE, City and Consultant hereby agree as follows:

1. Scope of Services

Consultant shall furnish City with professional consulting services as more particularly set forth in Exhibit A attached hereto and incorporated by this reference in full herein.

2. Method of Performing Services

Subject to the terms and conditions of this Agreement, Consultant may determine the method, details, and means of performing the services described herein.

3. Standard of Performance

Consultant agrees to undertake and complete these services to conclusion, using that standard of care, skill, and diligence normally provided by a professional person in performance of similar consulting services.

4. Nonexclusive Services

This Agreement shall not be interpreted to prevent or preclude Consultant from rendering any services for Consultant's own account or to any other person or entity as Consultant in its sole discretion shall determine. Consultant agrees that performing such services will not materially interfere with services to be performed for the City.

5. Coordination of Services

All services are to be coordinated with Project Manager, subject to the direction of the City Manager or Department Manager.

6. Place of Work

Consultant shall perform the services provided for in this Agreement at any place or location and at such times as the Consultant shall determine.

7. Correction of Errors

Consultant agrees to correct, at its expense, all errors which may be disclosed during review of Consultant's services. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be paid by Consultant.

8. Time for Performance

All services performed under this Agreement shall be completed pursuant to the schedule provided in Exhibit B attached hereto and incorporated by this reference in full herein. City agrees to amend the performance termination date whenever Consultant is delayed by action or inaction of City and Consultant promptly notifies Manager of such delays.

9. Principal in Charge

Consultant hereby designates Sal Contreras as its principal-in-charge and person responsible for necessary coordination with Manager.

10. Permits, Licenses, Certificates

Consultant, at Consultant's sole expense, shall obtain and maintain during the term of this Agreement, all permits, licenses, and certificates required in connection with the performance of services under this Agreement, including a City business license.

11. City's Responsibility

City shall cooperate with Consultant as may be reasonably necessary for Consultant to perform its services. Manager agrees to provide direction to Consultant as requested regarding particular project requirements.

12. Term of Agreement

This Agreement shall begin on May 1, 2009 and expire on December 31, 2011.

13. Termination

a. This Agreement may be terminated by City if Manager notifies Consultant, in writing, of Manager's desire to terminate the Agreement. Such termination shall be effective ten calendar days from the date of delivery or mailing of such notice. City agrees to pay Consultant in full for all amounts due Consultant as of the effective date of termination, including any expenditures incurred on City's behalf, whether for the employment of third parties or otherwise.

b. This Agreement may be terminated by Consultant if Consultant notifies Manager, in writing, of Consultant's desire to terminate the Agreement. Such termination shall be effective ten calendar days from the date of delivery or mailing of such notice and only if all assignments accepted by Consultant have been completed prior to the date of termination.

14. Compensation

a. City agrees to pay Consultant a first annual amount not to exceed \$498,000.00 for services provided under this Agreement at rates provided in Exhibit C attached hereto and incorporated by this reference in full herein.

b. The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to Consultant's services.

c. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the services performed by Consultant, its employees, subcontractors, agents and subconsultants.

d. Consultant shall provide Manager with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service.

e. If any sales tax is due for services performed by Consultant or materials or products provided to City by Consultant, Consultant shall pay the sales tax. City shall not reimburse Consultant for sales taxes paid by Consultant.

15. Method of Payment

a. City agrees to pay Consultant monthly upon acceptance of completed tasks and subtasks as outlined in Schedule C-1.

16. Responsibility for Expenses

Except as otherwise expressly provided in this Agreement, City shall not be responsible for expenses incurred by Consultant in performing services under this Agreement. All expenses incident to the performance of services under this Agreement shall be borne by the Consultant, including, but not limited to rent, vehicle, and travel, entertainment and promotion, general liability and health insurance, workers' compensation insurance, and all compensation and benefits of employees or agents engaged by Consultant. Consultant shall, at its own cost and expense, supply all personal property necessary or appropriate to perform the services provided for under this Agreement, including, but not limited to any personal property used by employees and agents of Consultant in the performance of such services.

17. Non-Appropriation of Funds

Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of City. In the event City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only up to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

18. Records

a. Consultant agrees that all final computations, exhibits, files, plans, correspondence, reports, drawings, designs, data and photographs expressly required to be prepared by Consultant as part of the scope of services ("documents and materials") shall be the property of City and shall, upon completion of the services or termination of this Agreement, be delivered to Manager.

b. At City's request, City shall be entitled to immediate possession of, and Consultant shall furnish to Manager within ten days, all of the documents and materials. Consultant may retain copies of these documents and materials.

c. Any substantive modification of the documents and materials by City staff or any use of the completed documents and materials for other City projects, or any use of uncompleted documents and materials, without the written consent of Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant. City agrees to hold Consultant harmless from all damages, claims, expenses and losses arising out of any reuse of the documents and materials for purposes other than those described in this Agreement, unless Consultant consents in writing to such reuse.

19. Maintenance and Inspection of Records

Consultant agrees that City or its auditors shall have access to and the right to audit and reproduce any of Consultant's relevant records to ensure that City is receiving all services to which City is entitled under this Agreement or for other purposes relating to the Agreement. Consultant shall maintain and preserve all such records for a period of at least three years after the expiration of this Agreement, or until an audit has been completed and accepted by City. Consultant agrees to maintain all such records in City or to promptly reimburse City for all reasonable costs incurred in conducting the audit at a location other than in City, including but not limited to expenses for personnel, salaries, private auditor, travel, lodging, meals and overhead.

20. Confidentiality of Information

Any documents and materials given to or prepared or assembled by Consultant under this Agreement shall be confidential and shall not be made available to any third person or organization by Consultant without prior written approval of the Manager.

21. Indemnity

Consultant agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly out of, pertain to, or relate to the negligence, recklessness, or willful misconduct from any acts or omissions of Consultant related to this Agreement as performed by Consultant or its agents, employees, subconsultants, subcontractors, consultants and other persons acting on Consultant's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, or passive negligence.

22. Insurance

a. Consultant shall obtain and maintain during the performance of any services under this Agreement the insurance coverages as specified in Exhibit Ins-A, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Consultant obtain and maintain such insurance coverages.

b. Consultant shall, prior to performance of any services, file with the Risk Manager evidence of insurance coverage as specified in Exhibit Ins-A. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in Exhibit Ins-A.

c. Maintenance of proper insurance coverages by Consultant is a material element of this Agreement. Consultant's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

23. Independent Contractor

a. City and Consultant agree that in the performance of the services, Consultant shall be, and is, an independent contractor, and that Consultant and its employees are not employees of City. Consultant has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant.

b. Consultant shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

c. Consultant acknowledges that Consultant and Consultant's employees are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers' compensation insurance benefits.

24. Consultant Not Agent

Except as Manager may specify in writing, Consultant, and its agents, employees, subcontractors and subconsultants shall have no authority, expressed or implied, to act on behalf of City in any capacity, as agents or otherwise, or to bind City to any obligation.

25. Conflict of Interest

Consultant shall promptly inform Manager of any contract, agreement, arrangement, or interest that Consultant may enter into or have during the performance of this Agreement that may conflict with City's interests. This requirement includes contracts, agreements and arrangements with manufacturers, suppliers, contractors or other clients whose interests might be served by the services performed under this Agreement and Consultant's or Consultant's clients' interest in land that might be affected by the services. Consultant shall take such measures as are necessary in the performance of this Agreement to prevent actual or appearances of conflicts of interest.

26. Assignability of Agreement

Consultant agrees that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's personnel's unique competence, experience and specialized personal knowledge. Assignments of any or all rights, duties, or obligations of Consultant under this Agreement will be permitted only with the express written consent of Manager, which consent may be withheld for any reason.

27. Successors and Assigns

Consultant and City agree that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Consultant and City.

28. Fair Employment Practices

a. Consultant agrees that all persons employed by Consultant shall be treated equally by Consultant without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of California, and City.

b. Consultant agrees that, during the performance of this Agreement, Consultant and any other parties with whom Consultant may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

c. Consultant agrees to state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

d. Consultant shall provide City staff with access to and, upon request by Manager, provide copies to Manager of all of Consultant's records pertaining or relating to Consultant's employment practices, to the extent such records are not confidential or privileged under State or federal law.

29. Force Majeure

Consultant and City agree that neither City nor Consultant shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include, but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after this Agreement was executed, fire, communication line failures, earthquakes, or other disasters.

30. Time of Essence

Consultant and City agree that time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

31. Covenants and Conditions

Consultant and City agree that each term and each provision of this Agreement to be performed by Consultant shall be construed to be both a covenant and a condition.

32. Governing Law

City and Consultant agree that the construction and interpretation of this Agreement and the rights and duties of City and Consultant hereunder shall be governed by the laws of the State of California.

33. Compliance with Laws

Consultant agrees to comply with all City, State, and federal laws, rules, and regulations, now or hereafter in force, pertaining to the services performed by Consultant pursuant to this Agreement.

34. Severability

City and Consultant agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

35. Waiver

City and Consultant agree that no waiver of a breach of any provision of this Agreement by either Consultant or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or Consultant to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

36. Counterparts

City and Consultant agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

37. Arbitration

Consultant and City agree that in the event of any dispute with regard to the provisions of this Agreement, the services rendered or the amount of Consultant's compensation, the dispute may be submitted to arbitration upon the mutual agreement of the parties, under such procedures as the parties may agree upon, or, if the parties cannot agree, then under the Rules of the American Arbitration Association.

38. Expenses of Enforcement

Consultant and City agree that the prevailing party's reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney Office) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

39. Authority to Execute

a. City acknowledges that the person executing this Agreement has been duly authorized by the City Council to do so on behalf of City.

b. Consultant acknowledges that the person executing this Agreement has been duly authorized by Consultant to do so on behalf of Consultant.

40. Notices

- a. Any notices to Consultant may be delivered personally or by mail addressed to:
- Penfield & Smith Engineers
1327 Del Norte Road, Suite 200
Camarillo, CA 93010
Attention: Sal Contreras, P.E.

b. Any notices to City may be delivered personally or by mail addressed to:
City of Oxnard General Services
1060 Pacific Ave., Bldg. 3
Oxnard, California 93030
Attention: Ralph Alamillo

41. Amendment

City and Consultant agree that the terms and conditions of the Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed upon to in writing by both the City representative authorized to do so under the City's purchasing policies and Consultant.

42. Entire Agreement

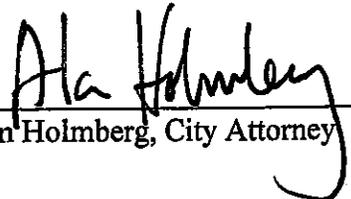
City and Consultant agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

CITY OF OXNARD



Dr. Thomas E. Holden, Mayor

APPROVED AS TO FORM:



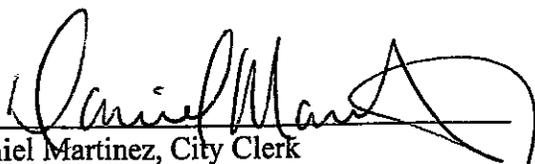
Alan Holmberg, City Attorney

APPROVED AS TO CONTENT:



Michael Henderson, Superintendent
General Service Department

ATTEST:



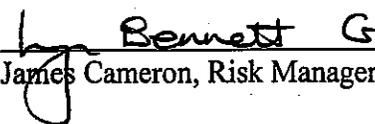
Daniel Martinez, City Clerk

CONSULTANT



Penfield and Smith Engineers
PETER NOSTROMO
VICE PRESIDENT

APPROVED AS TO INSURANCE:



James Cameron, Risk Manager

CITY OF OXNARD

REQUEST FOR SPECIAL BUDGET APPROPRIATION

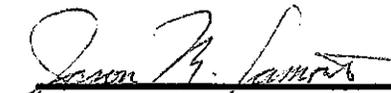
To the City Manager:

6-14-11

Request is hereby made for an appropriation of total \$ 40,500

Reason for appropriation: To appropriate Circulation System Improvement Fees to College Park SE-2

<u>FUND</u>	<u>DESCRIPTION/ACCOUNT</u>	<u>AMOUNT</u>
CIRCULATION SYS.IMPR.FEES 354	COLLEGE PARK SE-2 - (055703) 354-5723-826.86-05 IMPROV NOT BUILD-MAJOR RE	40,500
Net Effect of CIRCULATION SYS.IMPR.FEES Fund Balances =		<u>40,500</u>



Manager

REQUIRES CITY COUNCIL APPROVAL

DIRECTOR OF FINANCE



City Manager

Disposition	Approved _____ Rejected _____
Transfer by Journal Voucher _____	City Manager