

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	<u> X </u>
CM	<u> X </u>
CA	<u> -- </u>

DATE: NOVEMBER 20, 2006

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: INVESTMENT REVIEW COMMITTEE

SUBJECT: AWARD OF CONTRACT FOR AUDIT SERVICES

RECOMMENDED ACTION:

That the City Council award a contract for audit services to the accounting firm Rogers, Anderson, Malody and Scott, LLP, covering the fiscal years ending June 30, 2007, 2008, and 2009, and authorize the City Manager to execute the contract on the City's behalf.

ISSUE:

Shall an independent auditor be appointed?

BACKGROUND:

Each year an independent audit of the City's accounting records is conducted, and an opinion is rendered by the auditing firm with respect to whether the City's financial statements present fairly the results of operations for the year audited. When required, the auditor also performs a federally mandated audit of the City's expenditure of funds received pursuant to federal programs (such as Federal Highway Grants, Community Development Block Grants, Office of Justice Program Grants, etc.). In addition, the auditor tests the City's Gann Appropriations Limit calculation. Lastly, the auditor conducts an annual review of the City's Investment Policy and renders a report to management outlining any weaknesses identified in the City's systems of internal controls and procedures.

Since incorporation, the following firms have been engaged by the City to provide audit services:

- Moreland & Associates – Fiscal Years 1989 & 1990
- KPMG Peat Marwick – Fiscal Years 1991 through 1996
- Teaman, Ramirez & Smith – Fiscal Years 1997 through 2006

On August 23, 2006, the City Council authorized the issuance of a Request for Proposal ("RFP") for auditing services. The RFP was mailed to eleven accounting firms that provide governmental auditing services in Southern California. In response to the RFP, the City received four proposals.

DISCUSSION:

Pursuant to section VI of the RFP, the City Manager appointed the City's Investment Review Committee as the appropriate body to evaluate the four audit proposals. Based upon this review, there was a consensus that all four proposals satisfactorily addressed the criteria set forth in the RFP, which required discussions of:

1. **Technical qualifications and experience of key members of the engagement team and the firm.**
2. **Experience with similarly sized governmental agencies in providing the types of services outlined in this Request for Proposal.**
3. **Capability of handling all aspects of the engagement and providing ongoing support and technical assistance throughout the year.**
4. **Ability to provide continuity of staff from year to year.**
5. **Thoroughness of auditors proposed scope of work.**
6. **Clearly defined schedule of work to be performed and ability to meet required completion dates for key parts of the audit.**
7. **Reasonableness and competitiveness of cost budget.**

As stated in the RFP, the award of the contract is not to be based solely on the lowest fee proposed, but on a combination of all of the above listed criteria. The maximum fees proposed by each firm for the services set forth in the RFP were as follows:

Firm	City <u>Audit</u>	Single <u>Audit</u>	Invst. Policy <u>Review</u>	Total <u>Maximum</u>
Rogers Anderson Malody & Scott				
FY2007	\$12,510	\$1,390	\$800	\$14,700
FY2008	\$12,848	\$1,428	\$825	\$15,101
FY2009	\$13,365	\$1,485	\$850	\$15,700
Total Maximum Fees				\$45,501
Lance, Soll & Lunghard, LLP				
FY2007	\$12,720	\$1,340	\$1,170	\$15,230
FY2008	\$13,230	\$1,390	\$1,220	\$15,840
FY2009	\$13,760	\$1,450	\$1,270	\$16,480
Total Maximum Fees				\$47,550
Teaman, Ramirez & Smith, Inc.				
FY2007	\$13,500	\$2,000	\$800	\$16,300
FY2008	\$14,000	\$2,000	\$800	\$16,800
FY2009	\$14,500	\$2,000	\$800	\$17,300
Total Maximum Fees				\$50,400
Diehl, Evans & Company, LLP				
FY2007	\$21,000	\$3,500	\$2,000	\$26,500
FY2008	\$21,630	\$3,605	\$2,060	\$27,295
FY2009	\$22,279	\$3,713	\$2,122	\$28,114
Total Maximum Fees				\$81,909

The IRC determined that all of the firms were well qualified to provide the services required by the City, and all of the firms employed individuals with a great deal of governmental auditing experience. There was considerable uniformity in the approach each firm would take in their audit of the City, and none of the proposals stood out as superior. Following discussion of the merits, qualifications and proposed fees of each accounting firm, the IRC voted 5-1 (Committee member Harkey opposed) to forward a recommendation to the City Council that the contract be awarded to the firm Rogers, Anderson, Malody and Scott, LLP.

In the event that the Council desires to award the audit services contract to an alternate firm, the review committee reached a further consensus ranking the second-choice firm as Lance, Soll & Lunghard, LLP.

NOTIFICATION/FOLLOWUP:

The bidders will be notified of the Council's action.

FISCAL IMPACT:

The budgets for the period covered by this contract have not been adopted yet. The appropriate amounts will be included in the future budgets based upon the City Council's action on this item.

ALTERNATIVE ACTIONS:

1. Award the audit services contract to Lance, Soll & Lunghard, LLP
2. Other actions as may be determined by Council.

ACTION DOCUMENTS:

1. [Agreement for Auditing Services](#) 4

ATTACHMENTS:

1. Proposals for Audit Services (hard copies provided)

AGREEMENT FOR AUDITING SERVICES

THIS AGREEMENT is made and entered into this 20th day of November, 2006, by and between the CITY OF DANA POINT, a municipal corporation, hereinafter referred to as "CITY" and Rogers, Anderson, Malody and Scott, LLP, certified public accountants, hereinafter referred to as "AUDITOR."

WITNESSETH:

WHEREAS, on August 23, 2006, CITY invited bids for an independent audit of its financial statements and various other services; and

WHEREAS, pursuant to said invitation, AUDITOR submitted a bid which was accepted by CITY for said professional service; and

WHEREAS, AUDITOR is recognized as a competent and qualified certified public accountant, duly authorized to practice and licensed as such by the California State Board of Accountancy.

NOW THEREFORE, for and in consideration of the mutual promises, obligations, and covenants contained herein, the parties herein agree as follows:

1. TERM. The term of this Agreement shall be for a period of three (3) consecutive years, beginning with the fiscal year ending June 30, 2007.

2. CITY'S OBLIGATIONS. For and in consideration of AUDITOR furnishing services specified in this Agreement, CITY shall pay and AUDITOR shall receive in full compensation a total sum not to exceed \$14,700, \$15,101, and \$15,700 for the fiscal years ending June 30, 2007, 2008, and 2009, respectively.

Payments to AUDITOR shall be made within thirty (30) days after receipt by CITY of invoices from AUDITOR, which shall be rendered not more often than monthly. Special examinations, surveys, or detailed reports of any nature outside the scope of this Agreement shall be billed separately by AUDITOR and must be specifically authorized in writing by CITY in advance of such additional services proposed to be provided.

3. AUDITOR'S OBLIGATIONS. For and in consideration of payments and agreements hereinafter mentioned to be made and performed by CITY, AUDITOR agrees with CITY to furnish those services as set forth in Attachment 1, Request for Proposal for Auditing Services, attached hereto and incorporated herein by reference, and to perform as required by this Agreement and the said specifications.

4. INSURANCE. AUDITOR shall procure and maintain for the entire term of this Agreement, valid insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by AUDITOR, or AUDITOR'S agents, representatives, employees, or subcontractors. AUDITOR shall further maintain professional liability insurance in the amount of one-million dollars (\$1,000,000.00) to protect CITY for AUDITOR'S negligent acts, errors, and/or omissions of a professional nature.

5. HOLD HARMLESS AND INDEMNIFICATION. AUDITOR, agrees to indemnify, defend, and hold harmless CITY, its officials, officers, employees, representatives, and agents from and against all claims, lawsuits, liabilities, or damages of whatever nature including without limitation all consequential damages arising out of or in connection with, or relating in any manner to work performed by AUDITOR, his agents, employees and subcontractors, and employees thereof pursuant to this Agreement. AUDITOR shall investigate and indemnify CITY and do whatever is necessary to protect CITY, its officials, officers, employees, agents, and representatives as to any such claims, lawsuits, liabilities, or damages.

6. AMENDMENTS. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon written approval by the CITY'S Director of Financial Management.

7. TERMINATION. If, at any time during the term of this Agreement, CITY determines that AUDITOR is not faithfully abiding by any term or condition contained herein, CITY may notify AUDITOR in writing of such defect or failure to perform; which notice must give AUDITOR a ten (10)-day notice of time thereafter in which to perform said work or cure the deficiency. If AUDITOR has not performed the work or cured the deficiency within the ten (10) days specified in the notice, such shall constitute a breach of this Agreement and CITY may terminate this Agreement immediately by written notice to the AUDITOR to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities or rights under this Agreement except, however, any and all obligations of AUDITOR'S surety shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the termination hereof. In said event, AUDITOR shall be entitled to the reasonable value of its services performed from the beginning of the period in which the breach occurs up to the day it received CITY'S Notice of Termination, less any offset from such payment representing the CITY'S damages from such breach. CITY reserves the right to delay any such payment until completion or confirmed abandonment of the project, as may be determined in the CITY'S sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall AUDITOR be entitled to receive in excess of the compensation quoted in its bid.

8. INCORPORATION BY REFERENCE. The Request for Proposal for Auditing Services, Attachment 1 hereto, and the proposal submitted by Auditor

dated September 18, 2006, Attachment 2 hereto, are hereby incorporated by reference and made a part of this Agreement.

9. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the final, complete, and exclusive agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein or executed as an amendment hereto, shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.

10. CONTRACT ASSIGNMENT. AUDITOR shall not assign, transfer, convey, or otherwise dispose of this Agreement, or its right, title, or interest, or its power to execute such an Agreement to any individual or business entity of any kind without the prior written consent of CITY.

11. INDEPENDENT CONTRACTOR.

- a. AUDITOR is, and at all times hereafter shall be, an independent contractor of CITY during the entire term of this Agreement. AUDITOR specifically recognizes and acknowledges said status as an independent contractor and not as an employee of CITY. All personnel of AUDITOR shall be employees of AUDITOR and not employees of CITY. AUDITOR shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all withholding taxes.
- b. AUDITOR shall comply with all Federal and State statutes and regulations relating to the employer/employee relationship including, but not limited to, minimum wage, non-discrimination, equal opportunity, workers compensation, hazardous/unsanitary or dangerous surroundings, the Fair Labor Standards Act 29 USCA Section 201 et seq., and the Immigration Reform and Control Act of 1986 * USCA Section 245(a) et seq.

12. ANTI-DISCRIMINATION. In the performance of the terms of this Agreement, AUDITOR agrees that it will not engage in discrimination in employment of persons because of the age, race, color, sex, national origin or ancestry, or religion of such persons. Violation of this provision may result in the imposition of penalties referred to in Labor Code Section 1735.

13. NOTICE. All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

CITY:
City of Dana Point
Attn: Director of Administrative Services
33282 Street of the Golden Lantern, Suite 203
Dana Point, CA 92629

AUDITOR:
Rogers, Anderson, Malody and Scott, LLP
Attn: Terry Shea
290 North "D" Street, Suite 300
San Bernardino, CA 92401

All notices sent pursuant to this Agreement shall be deemed received (1) immediately if served by personal delivery, and (2) on the fifth day after deposited in the custody of the U.S. Postal Service if served by mail.

14. ATTORNEYS FEES. In the event an action is commenced by either party to enforce any rights under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs, in addition to any other relief granted by the Court.

15. CONFLICT OF INTEREST.

a. All information gained by AUDITOR in performance of this Agreement shall be considered confidential and shall not be released by AUDITOR without CITY'S prior written authorization excepting that information which is a public record and subject to disclosure pursuant to the Public Records Act, government Code Section 6250 et seq. AUDITOR, its officers, employees, agents, or subcontractors, shall not voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the project or cooperate in any way with a party who may be adverse to CITY or whom AUDITOR reasonably should know may be adverse in any subsequent litigation. AUDITOR shall incur no liability under this Agreement for materials submitted by it which are later released by CITY, its officers, employees, or agents. AUDITOR shall also incur no liability for statements made by it at any public meeting, or for any document released by it for which prior written CITY authorization was obtained.

If AUDITOR or any of its officers, employees, consultants, or subcontractors does voluntarily provide information in violation of this Agreement, CITY has the right to reimbursement and indemnity from AUDITOR for any damages caused by AUDITOR'S conduct--including attorney's fees.

AUDITOR shall promptly notify CITY should AUDITOR, its officers, employees, agents or subcontractors be served with any Summons, Complaint, Subpoena, Notice of Deposition, Request for Documents, Interrogatories, Request for Admissions or other discovery requests from any party regarding this agreement and the work performed thereunder. CITY retains the right, but not the obligation, to represent AUDITOR and/or to be present at any deposition, hearing, or similar proceeding. AUDITOR agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by AUDITOR. However, CITY'S right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

CITY warrants that AUDITOR will have fully met the requirements of this provision by obtaining CITY'S written approval prior to providing documents, testimony, or declarations; Consulting with CITY before responding to a Subpoena or court order; in the case of depositions upon providing Notice to CITY of same; or providing CITY opportunity to review discovery responses prior submission. For purposes of this section, a written authorization from CITY shall include a "faxed" letter.

b. AUDITOR covenants that neither they nor any officer or principal of their firm have any interests, nor shall they acquire any interest, directly or indirectly which will conflict in any manner or degree with the performance of their services hereunder. AUDITOR further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or subcontractor. AUDITOR further covenants that AUDITOR has not contracted with nor is performing any services directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnerships owning property in the CITY or the study area and further covenants and agrees that AUDITOR and/or its subcontractors shall provide no service or enter into any contract with a any developer(s) and/or property owner(s) and/or firm(s), and/or partnership(s) owning property in the CITY and/or study area prior to completion of this Agreement.

16. AUTHORITY TO EXECUTE AGREEMENT. Both CITY and AUDITOR hereby represent and covenant that each individual executing this Agreement on behalf of each party is a person duly authorized and empowered to execute agreements for such party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF DANA POINT:

AUDITOR:

By: _____
Douglas Chotkevys, City Manager

By: _____

ATTEST:

Kathy M. Ward, Acting City Clerk

APPROVED AS TO FORM:

Patrick Munoz, City Attorney