

## CITY COUNCIL

For City Clerk's Use:

☐

APPROVED

☐

DENIED

Reso No. \_\_\_\_\_

File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

Agenda Item No.: 7

Date: July 14, 2010

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Edward N. Domingue, Director of Engineering Services  
Anne Marc-Aurele, Real Property Agent

**SUBJECT:** Consulting Agreement with Overland, Pacific & Cutler, Inc. for Acquisition and Relocation Services – Juniper and Felicita Road Widening Project

**RECOMMENDATION:**

It is requested that Council adopt Resolution No. 2010-113 authorizing the City Manager to execute a Consulting Agreement with Overland, Pacific & Cutler, Inc. for acquisition and relocation services in an amount not to exceed \$72,950.

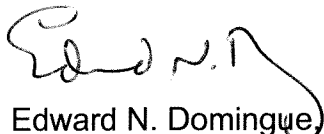
**FISCAL ANALYSIS:**

The cost of \$72,950 for the Acquisition and Relocation Assistance will be paid out of the capital budget for the Juniper and Felicita Road Widening Project.

**BACKGROUND:**

In May 2008, Keagy Real Estate was hired to appraise the necessary right-of-way for this project. In the last two years the project has been revised, and early in 2010, the final right of way requirements were furnished to the appraiser so the appraisals could be done and then reviewed by the City; the appraisals are now complete. During this period, Overland, Pacific & Cutler, Inc. (OPC) was hired to do the acquisitions and relocations for the fourteen parcels that are necessary for this project. OPC will provide the staffing for the acquisitions and relocations required to complete this project. This service insures consistent interpretation of all Federal and State regulations and the timely relocation of all affected property owners. The Real Property Division of Engineering Services will oversee the consultant contract.

Respectfully submitted,



Edward N. Domingue, P.E.  
Director of Engineering Services



Anne Marc-Aurele  
Real Property Agent

## RESOLUTION NO. 2010-113

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE CITY MANAGER, TO EXECUTE, ON BEHALF OF THE CITY, A CONSULTING AGREEMENT WITH OVERLAND, PACIFIC & CUTLER, INC. FOR ACQUISITION AND RELOCATION SERVICES FOR PROPERTIES NECESSARY FOR THE JUNIPER AND FELICITA ROAD WIDENING PROJECT

Overland, Pacific & Cutler, Inc. (OPC)

WHEREAS, the improvement of Juniper and Felicita Roads is part of the Capital Improvement Program; and

WHEREAS, the Director of Engineering Services recommends that the project proceed in order to use current Transnet funding; and

WHEREAS, the project will require property acquisition and Relocation Assistance for fourteen (14) property owners in conformance with Federal and State laws and the Uniform Relocation and Real Property Acquisition Act of 1974; and

WHEREAS, the Engineering Services Department Real Property staff does not have the resources to provide these services and it has been determined that OPC has the necessary experience and expertise.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. That the City Council accepts the recommendation of the Director of Engineering Services.

3. That the City Manager is authorized to execute, on behalf of the City, a Consulting Agreement ("Agreement") with Overland, Pacific & Cutler, Inc., in an amount not to exceed \$72,950, to provide Acquisition and Relocation Assistance services for the Juniper and Felicita Road Widening Project. A copy of the Agreement is attached as Exhibit "A" and incorporated by this reference.



**CITY OF ESCONDIDO**  
**CONSULTING AGREEMENT**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Between:           CITY OF ESCONDIDO  
                      a Municipal Corporation  
                      201 N. Broadway  
                      Escondido, California 92025  
                      Attn: Anne Marc-Aurele  
                      760-839-4034  
                      ("CITY")

And:               Overland, Pacific & Cutler, Inc.  
                      438 Camino Del Rio S, Suite 213  
                      San Diego, CA 92108  
                      Vince McCaw, Senior Project Manager  
                      619-688-7980  
                      ("CONSULTANT")

Witness that whereas:

- A. It has been determined to be in the CITY's best interest to retain the professional services of a consultant to provide Acquisition Services and Relocation Assistance for the Juniper and Felicita Road Widening Project;
- B. The CONSULTANT is considered competent to perform the necessary professional services for CITY;

NOW, THEREFORE, it is mutually agreed by and between CITY and CONSULTANT as follows:

- 1. Services. The CONSULTANT will furnish all of the services as described in "Attachment A" which is attached and incorporated by this reference.
- 2. Compensation. The CITY will pay the CONSULTANT in accordance with the conditions specified in "Attachment B," in the sum of \$72,950. Any breach of this Agreement will relieve CITY from the obligation to pay CONSULTANT, if CONSULTANT has not corrected the breach after CITY provides notice and a reasonable time to correct it. If this Agreement is amended at any time, additional compensation of CONSULTANT contained in subsequent amendment(s) shall not exceed a cumulative total of twenty-five percent (25%) of the maximum payment provided for in this Section 2.

3. Scope of Compensation. The CONSULTANT will be compensated for performance of tasks specified in "Attachment A" only. No compensation will be provided for any other tasks without specific prior written consent from the CITY.
4. Duties. CONSULTANT will be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other services furnished by the CONSULTANT under this Agreement, except that the CONSULTANT will not be responsible for the accuracy of information supplied by the CITY.
5. Personnel. The performance of services under this Agreement by certain professionals is significant to the CITY. CONSULTANT will assign the persons listed on "Attachment C," which is attached and incorporated by this reference, to perform the Services described in Paragraph 1, and will not add or remove persons from the list without the prior written consent of the CITY. If no designation is made, then CONSULTANT may not assign services without obtaining the advance written consent of the CITY. CONSULTANT will not subcontract any tasks under this Agreement without obtaining the advance written consent of the CITY.
6. Termination. Either CONSULTANT or the CITY may terminate this Agreement with thirty (30) days advance written notice.
7. City Property. All original documents, drawings, electronic media, and other material prepared by CONSULTANT under this Agreement immediately becomes the exclusive property of the CITY, and may not be used by CONSULTANT for any other purpose without prior written consent of the CITY.
8. Insurance.
  - a. The CONSULTANT shall secure and maintain at its own cost, for all operations, the following insurance coverage, unless reduced by the City Attorney:
    - (1) General liability insurance. Occurrence basis with minimum limits of \$1,000,000 each occurrence, \$2,000,000 General Aggregate, and \$1,000,000 Products/Completed Operations Aggregate; and
    - (2) Automobile liability insurance of \$1,000,000 combined single-limit per accident for bodily injury and property damage, unless waived as provided in 8(b) below; and
    - (3) Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship; and
    - (4) Errors and Omissions professional liability insurance with minimum coverage of \$1,000,000.
  - b. It is the parties' understanding that the use of a motor vehicle is not a primary subject of this Agreement. CONSULTANT acknowledges that operating a motor vehicle is outside the scope of this Agreement and occurs only at the convenience of the CONSULTANT. A waiver of automobile liability insurance is only effective if both sets of initials appear below, otherwise such insurance is required.

Acknowledged by CONSULTANT \_\_\_\_\_

Waiver appropriate by CITY \_\_\_\_\_

- c. Each insurance policy required above must be acceptable to the City Attorney.
  - (1) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A- rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
  - (2) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
  - (3) Both the General Liability and the Automobile Liability policies must name the CITY specifically as an additional insured under the policy on a separate endorsement page. The CITY includes its officials, employees, and volunteers. The endorsement must be ISO Form CG 20 10 11 85 edition or its equivalent for General Liability endorsements and CA 20 01 for Automobile Liability endorsements.
  - (4) The General Liability policy must include coverage for bodily injury and property damage arising from CONSULTANT's work, including its on-going operations and products-completed operations hazard.
  - (5) The General Liability policy must be primary and noncontributory and any insurance maintained by CITY is excess.
- c. In executing this Agreement, CONSULTANT agrees to have completed insurance documents on file with the CITY within fourteen (14) days after the date of execution. Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.
- 9. Indemnification. CONSULTANT (which in this paragraph 9 includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless the CITY from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, for any of the following:
  - a. Any claim of liability arising out of the negligence or any acts or omissions of CONSULTANT in the performance of this Agreement;
  - b. Any personal injuries, property damage or death that CONSULTANT may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by the CITY, or from any dangerous condition of property; or
  - c. Any injury or death which results or increases by any action taken to medically treat CONSULTANT.
- 10. Anti-Assignment Clause. The CONSULTANT may not assign, delegate or transfer any interest or duty under this Agreement without advance written approval of the CITY, and any attempt to do so will immediately render this entire Agreement null and void.
- 11. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.
- 12. Independent Contractor. CONSULTANT is an independent contractor and no agency or employment relationship, either express or implied, is created by the execution of this Agreement.

13. Merger Clause. This Agreement and its Attachments, if any, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and any of its Attachments, the provisions of this Agreement must prevail.
14. Anti-Waiver Clause. None of the provisions in this Agreement will be waived by CITY because of previous failure to insist upon strict performance, nor will any provision be waived by CITY because any other provision has been waived, in whole or in part.
15. Severability. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provisions of this Agreement.
16. Choice of Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in San Diego County, California.
17. Multiple Copies of Agreement/Counterparts. Multiple copies and/or counterparts of this Agreement may be executed, including duplication by photocopy or by computerized scanning device. Each duplicate will be deemed an original with the same effect as if all the signatures were on the same instrument. However, the parties agree that the Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence should any differences exist among copies or counterparts of the document.
18. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the CITY.
19. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below. Each party agrees to promptly send notice of any changes of this information to the other party, at the address first above written.
20. Business License. The CONSULTANT is required to obtain a City of Escondido Business License prior to execution of this Agreement.
21. Compliance with Applicable Laws, Permits and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of this Agreement. CONSULTANT shall obtain any and all licenses, permits, and authorizations necessary to perform services set forth in this Agreement. Neither CITY, nor any elected nor appointed boards, officers, officials, employees, or agents of CITY shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
22. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. CONSULTANT affirms that as an employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on this public project. CONSULTANT agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.

IN WITNESS WHEREOF, the parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

CITY OF ESCONDIDO

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

\_\_\_\_\_  
Clay Phillips, City Manager

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

OVERLAND, PACIFIC & CUTLER, INC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Vince McCaw, Senior Project Manager

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.



PROPOSAL TO PROVIDE ACQUISITION AND RELOCATION ASSISTANCE SERVICES  
*Juniper St. & Felicita Ave. Street Widening*

**ATTACHMENT A**

**Scope of Work**

**Acquisition Services**

1. Establish and maintain a complete and current record file for each ownership in a form acceptable to the City.
2. Maintain a diary report of all contacts made with property owners or his/her representative and a summary of the status of negotiations indicating attitude of owners, problem areas, and other pertinent information. Originals or copies of all applicable written correspondence will be maintained in files.
3. Prepare and assemble acquisition contracts, deeds and related acquisition documents required for the acquisition of necessary property interests. Said acquisition documents shall be in a form acceptable to the City. A written reconciliation of the title matters affecting the acquisition shall be prepared for each property. All documents shall be submitted to a designated City representative for review and approval prior to presentation to the property owner.
4. Analyze litigation guaranties, approved appraisal reports, legal descriptions and other documents furnished by the City, and/or prepared by OPC as provided above, in sufficient detail to negotiate with property owners and other parties to acquire interests in real property required by the City. Unless otherwise authorized by the City, negotiations shall include personal presentation to the property owner of the written Offer to Purchase and related/required documents, the Appraisal Summary, along with an explanation of the project and acquisition process.
5. Follow-up and negotiate with each property owner, as necessary, and submit required justifications in writing to the City for review and approval prior to presentation of any settlement offer to the property owner. Generally, give owner approximately 30 days to consider initial offer before negotiations can be considered "critical".
6. Recommend "impasse letter" be sent by City staff for any parcel where, after diligent attempts to settle by negotiation, it appears eminent domain will be needed or prudent to acquire the needed interest. The City will send final letter based on information and circumstances to be provided by OPC.
7. Within 14 calendar days of execution of documents by property owners, transmit to the City, for City Council approval and acceptance, acquisition documents executed by owners and other parties in interest. Each transmittal package shall include:
  - a) Fully executed and properly notarized Deed(s),
  - b) Fully executed acquisition contract (Acquisition Contract) with attachments, in triplicate, and
  - c) A completed settlement memorandum, which summarizes, explains, and justifies, as applicable, the pertinent data relative to the transaction.
8. Prepare a written, status report based on the agreed-upon guidelines on information to be provided. Confer with the City verbally on general status, problem areas, and progress.

*Escrow Coordination, or Eminent Domain Coordination*

Negotiated Settlement: Assist the escrow/title company in the following:

1. Open escrow by submitting escrow instruction letter providing for title insurance coverage at the settlement amount with fully executed Acquisition Contract and notarized Deed.
2. Coordinate payment of just compensation and closing costs with escrow.
3. Upon receipt of returned original recorded deed, maintain the deed in parcel file.



PROPOSAL TO PROVIDE ACQUISITION AND RELOCATION ASSISTANCE SERVICES  
*Juniper St. & Felicita Ave. Street Widening*

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4. Upon receipt of title/escrow company's title policy, compare title matters in title policy to settlement memorandum for consistency.
5. Coordinate with title company to correct any title exception or legal description errors and have title company provide corrected title policy as necessary; retain policy in parcel file.
6. Distribute conformed copies of executed contract as directed by the City.

*Title Clearance*

1. Clearance of title matters as set forth in the settlement memorandum, which shall include but not be limited to, payment of taxes due, and the securing of full or partial releases, subordination and/or re-conveyance from lien holders of record.
2. Coordinate escrow activities on behalf of the City, and coordinate payment of just compensation to property owners.

City Support Needed for OPC to Accomplish Work Plan/Scope of Work

City shall provide the following documents and services:

- Legal descriptions and plat map(s), identifying parcel(s) to be acquired;
- Staking of the proposed take areas if required by the real estate appraiser;
- Proof of Approved EIR or Approved Negative Declaration;
- Format for City-Standard offer package<sup>1</sup>;
- Format for City-Standard Acquisition Contract and Deeds<sup>1</sup>;
- Geometric and design information (particularly plan and profile views);
- Legal opinion(s) if required, (i.e., larger parcel determinations, etc.)
- A designated staff representative to coordinate project issues, timing, etc.;
- Prompt response to OPC's written questions relating to City policies.

**Relocation Plan Preparation Services**

1. Interview all potentially affected occupants to determine relocation needs. The interview queries business needs, special licensing or zoning needs, needed permits, information on trade areas, special moving requirements, etc. The interview also queries household information such as: the number, ages and gender of all occupants, income of the household, distance to employment and utilized neighborhood services, special needs of the household, etc.
2. Research the marketplace for available replacement locations and/or establish rent schedules for compiling project costs.
3. Compile statistics on available housing and business replacement sites.
4. Calculate potential project costs.
5. Present draft relocation plan to client.
6. Distribute plan to project participants and make it available for public inspection.
7. Make any needed revisions brought up during the public inspection period.
8. Participate in adoption presentation meeting.

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<sup>1</sup> Or prompt review and approval of OPC-provided format.

PROPOSAL TO PROVIDE ACQUISITION AND RELOCATION ASSISTANCE SERVICES  
*Juniper St. & Felicita Ave. Street Widening*

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**Relocation Assistance Program Implementation Services**

1. Secure basic case information and set up case file; maintain the necessary case documentation and contact diary throughout the course of our involvement with the claimant.
2. Conduct initial in-depth field interview with claimant: Document rent, income, family size, names/ages of occupants and determine relocation needs, preferences and special requirements; provide general information notices and brochure; explain relocation process, rights and benefits available.
3. Provide on-going advisory assistance to minimize hardships on claimants, including referrals to and coordination with community service resources, public housing and other public services as needed.
4. Document rent with rental agreement, receipts, or economic rent if needed.
5. Document/verify income using pay stubs, budget worksheets, tax returns, certification, and/or cash affidavit as necessary. Use rent-to-rent method if income cannot be verified.
6. Assist with the reconciliation of FF&E ownership among owner and tenant (if required).
7. Create rent schedule for project as appropriate and if authorized by client.
8. Search for and document comparables for each claimant: provide initial referrals and three sets of additional housing referrals every 4-6 weeks, as necessary.
9. Prepare letter of eligibility based on most appropriate comparable or rent schedule, and seek authorization of client.
10. Deliver letter of eligibility to claimant, discuss findings and impacts to occupants' particular needs. Amend the letter of eligibility one additional time if the economics of the comparable's availability changes over the course of our assignment.
11. Prepare and deliver 90-day notices to vacate no later than 12 weeks after general information notices have been delivered.
12. Arrange for transportation to view replacement sites if needed; assist claimants with their selection of a replacement site, with lease offers, with review of rental agreements, and with move bids or fixed moving payment.
13. Inspect selected site to ensure it meets decent, safe, and sanitary requirements.
14. Monitor the replacement site escrow and explain the relocation process to agent and escrow officer as necessary.
15. Review and discuss claimants' moving plans, build-out specifications and personal property inventory and coordinate eligibility limitations in advance of physical move.
16. Verify vacation of the displacement site and secure a certificate of abandonment.
17. Determine eligibility for proposed amount of relocation benefits, including actual and reasonable moving payments, rental/purchase differential payments, re-establishment payments, and fixed payments as applicable.
18. For residential moves, secure and process an advance claim to assist with the move, and a second final claim incorporating the moving costs and rental/purchase differential payment once family has moved to selected displacement site.
19. Each claim will be signed by the claimant, supported by appropriate back-up (written bids, schedules, receipts, etc.), and will be reviewed by OPC's project manager for recommendation before submitting to client for approval. Each claim check will be delivered to claimant in person (as feasible) and a receipt of payment will be secured.

PROPOSAL TO PROVIDE ACQUISITION AND RELOCATION ASSISTANCE SERVICES  
*Juniper St. & Felicita Ave. Street Widening*

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***Optional Services***

**Supplemental Relocation Assistance Services**

1. Provide support to client for claimant appeals.
2. Provide additional site referrals beyond that which was presented in Scope of Work.
3. Continue to work with claimant beyond 180 days from general information notice.
4. Aid eminent domain counsel with loss of business goodwill defense, preparation of support necessary to justify all-inclusive settlement for relocation and loss of business goodwill, and preparation of settlement agreements.
5. Administer periodic payments of relocation benefits.
6. Security or dual consultant services which may be necessary in hostile/violent households.
7. Translation services (other than Spanish) if needed by OPC and requested by client or claimant.
8. Intensive move planning, administration, and physical move coordination services in complex or hardship cases.
9. Section 8 administration or processing services where OPC aids in the application process on behalf of claimants or is converting conventional units to Section 8 units.

## ATTACHMENT B

Payment in the amount of \$2,500 will be made with thirty (30) days upon acceptance of the final Relocation Plan for Council approval.

For activities associated with the residential acquisition and relocation scope of work, identified in Attachment "A", CONSULTANT will submit monthly invoices for acquisition and relocation services rendered based on the hourly rate schedule provided, and with the understanding that CONSULTANT'S total hourly billing shall not exceed the project maximum (\$72,950) without prior authorization.

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