



DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

June 22, 2006

Mr. Hugh W. Morgan
Kramer Rayson LLP
First Tennessee Plaza, Suite 2500
800 South Gay Street
Knoxville, TN 37929

Re: Professional Project Services, Inc. Request for No-Action Relief

Dear Mr. Morgan:

In your letter dated June 22, 2006, on behalf of Professional Project Services, Inc., which does business under the trade name Pro2Serve (the "Company"), you seek assurances that the staff of the Division of Market Regulation ("Staff") will not recommend enforcement action to the Commission under Section 15(a) of the Securities Exchange Act of 1934 ("Act") if the Company implements the stock sale and repurchase program described in your letter ("Plan") without either the Company or the directors and employees who administer the Plan registering as broker-dealers in accordance with Section 15(b) of the Act.

Based on the facts and representations set forth in your letter, the Staff will not recommend enforcement action to the Commission if the Company and its directors and employees carry out the Plan as described without registering as broker-dealers. In particular, we note that the Company's stock is not registered under Section 12 of the Exchange Act, that there is no public trading market for the stock, and that the Plan is designed to qualify as a "compensatory benefit plan" within the meaning of Rule 701 under the Securities Act of 1933 ("Securities Act"). The staff position is limited to enforcement action under Section 15 only and does not purport to express any legal conclusions with respect to the applicability of the statutory or regulatory provisions of the federal securities laws, including the applicability of Securities Act Rule 701. Moreover, this response is based upon the representations you have made in your letter, and any different facts or conditions may require a different response.

Sincerely,

Brian A. Bussey
Assistant Chief Counsel

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June 22, 2006

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Ms. Catherine McGuire
Chief Counsel and Associate Director
Division of Market Regulation
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Professional Project Services, Inc. - Request for No-Action Advice

Dear Ms. McGuire:

We are counsel to Professional Project Services, Inc., a Tennessee corporation that does business under the trade name Pro2Serve (the "Company" or "Pro2Serve"). The purpose of this letter is to request, on behalf of Pro2Serve, that the Staff advise that it will not recommend that the Securities and Exchange Commission (the "Commission") take any enforcement action under Section 15(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), if the Company adopts and implements a stock sale and repurchase program for its employees and certain other eligible participants pursuant to the terms of a Stock Sale and Purchase Plan (the "Plan"), which is more fully described herein, without either the Company, or those directors and employees of the Company who oversee and administer the Plan, registering as a broker and/or dealer pursuant to Section 15(b) of the Exchange Act.

Pro2Serve was incorporated in 1995 and provides architectural, engineering, and technical support services to the government, industry and commercial business sectors. The Company has only one class of shares which is common stock with a par value of \$0.0005 per share (hereinafter sometimes referred to as "Shares," "Common Stock" or "Stock"). As of March 1, 2006, the Company had 47 shareholders, 41 of whom were current or former employees, directors, officers, consultants or advisors of the Company. 86% of the outstanding Shares of the Company are held by current or former employees, directors, officers, consultants or advisors. In addition, as of March 1, 2006, there were 31 current and former employees, directors, officers, consultants or advisors who held stock options granted by the Company.

The Company has encouraged employee ownership through a stock option program.

Due to the Company's philosophy of providing employee incentives, including stock options, it has experienced significant growth. The Company Stock is not registered under Section 12 of the Exchange Act and there is no public trading market for the Stock. The Stock is also subject to transfer restrictions.¹ Pro2Serve has no intentions or plans to list its stock on any exchange or market or make a public offering of its stock.

As a result of its lack of liquidity, shareholders of the Company have not been able to realize a financial return from the growth in the Company's value. In order to provide a degree of liquidity to shareholders, and afford employees an opportunity to acquire or increase their ownership in the Company, Pro2Serve is proposing to establish and implement the Plan. The Plan will permit shareholders of Pro2Serve Common Stock who have had their Shares for longer than one year to sell their Shares to the Company on one or two occasions per year on dates established by the Company, and at the same time, current employees, directors, officers, consultants or advisors will have the opportunity to buy Common Stock from the Company.

¹ Pursuant to Shareholder Agreements, the resale of shares of the Company is subject to a right of first refusal in favor of the Company, with other transfers permitted only to certain family members and trusts. The Company also has an option to purchase shares held by employees upon the termination of employment. The charter and by-laws of the Company limit or restrict ownership of shares to U.S. citizens.

1. Purpose. The Plan is intended to provide liquidity for owners of Common Stock, and to offer eligible participants an opportunity to acquire or increase their equity in the Company. The Plan will permit shareholders to sell Common Stock to the Company and will permit eligible participants to buy Common Stock from the Company, on up to two predetermined “trade” days annually (each a “Trade Date”). The Plan is designed to qualify the sales to eligible participants as a “compensatory benefit plan” within the meaning of Rule 701 (“Rule 701”) under the Securities Act of 1933, as amended (the “Securities Act”).²

2. Administration. The Company’s Board of Directors shall appoint a committee (the “Committee”) to administer the Plan. The Committee is required to establish procedures and guidelines for the operation of the Plan, including, but not limited to, provisions dealing with insider trading.

3. Participants. The Plan will permit shareholders to sell Common Stock to the Company that they own and have held for at least one year (“Eligible Shareholders”) and will permit full time employees³, directors, officers, consultants and advisors of the Company (hereinafter referred to as Eligible Participants), to purchase Common Stock directly from the Company. These transactions may occur only on one or two Trade Dates each year as established by the Company. Any Eligible Shareholder who expresses a desire to sell and any Eligible Participant who expresses a desire to purchase Common Stock with respect to a specific Trade Date would nevertheless be ineligible to participate for one or more of the following reasons and shall be deemed an “Ineligible Person”:

- (1) The transaction by such person in the Common Stock would result in a violation of applicable law (e.g., the sale to such person would be impermissible under Rule 701); and/or

² We believe that the terms of the Plan are consistent with the Rule 701 plan for which the Staff granted no-action relief in Marshalls Finance Limited and Lasser Marshall, Inc., SEC No-Action Letter (available June 15, 1993).

³ Employees who have worked 832 hours during the six month period immediately preceding the Trade Date will be deemed full time employees for the purposes of the Plan.

- (2) Such person's participation would involve a breach of fiduciary duty by such person, the Company, or any member of the Committee.

The Committee will determine whether any Eligible Shareholder who expresses a desire to sell Common Stock, or whether any Eligible Participant who expresses a desire to purchase Common Stock is an Ineligible Person. This authority must be exercised in a non-arbitrary and non-discriminatory manner, consistent with applicable law and all of the terms and conditions of the Plan.

4. Company as Contra-Party to Transactions. Each sale and each purchase under the Plan will be a transaction with the Company - i.e., all sales by Eligible Shareholders will be made to the Company, and all purchases by Eligible Participants will be from the Company.

5. Price Determination. All sales and purchases of Common Stock that are consummated on a specific Trade Date will be at one uniform price per share as determined by the Committee. The price fixed by the Committee must be within the price range obtained from an independent third party engaged by the Company to perform a valuation of the Company's Common Stock. The Committee may not fix a price per share for any Trade Date that is outside the range reported in the immediately preceding valuation unless the price per share is within the range of a "bring-down" valuation provided to the Company by the independent third party that provided the preceding valuation. A bring-down valuation must consist of an update/validation by the independent third party of the most recent valuation, but it need not necessarily be a formal, "full-blown" valuation, unless the independent third party requires one. Moreover, on any given Trade Date, the quarterly or year-end financial statement (as the case may be) that the independent third party used in determining the most recent valuation of the Company's Common Stock must still be current and no material developments can have occurred since the valuation was performed (and the related price range was established) unless a bring-down of the valuation is or has been done by the independent third party (otherwise, the relevant Trade Date must be cancelled). As a point of clarification, prior to any Trade Date, a bring-down valuation will be required under the Plan if a material development has occurred with respect to the Company since the most recent valuation (or bring-down thereof) and the Company will be required to disclose the material development to Eligible Shareholders and Eligible Participants prior to the

applicable Trade Date (otherwise, the relevant Trade Date must be cancelled). After the announcement of the Trade Date and the trade price applicable to that Trade Date, an Eligible Shareholder who wishes to engage in a sale or an Eligible Participant who wishes to purchase on the Trade Date must submit to the Company a trade request consisting of a sale offer or a purchase offer using a form prescribed by the Company. Under the Plan, a "Purchase Offer" is an offer by an Eligible Participant to purchase up to a specific number of Shares of Common Stock and a "Sale Offer" is an offer by an Eligible Shareholder to sell up to a specific number of such Shares, at the price announced by the Company with respect to the applicable Trade Date.

6. Notice; Informational Meetings; Disclosures to Participants. Following the Committee determination of the price per share of Common Stock applicable to a Trade Date, the Committee will cause a notice to be sent to all Eligible Shareholders and Eligible Participants disclosing the price per share applicable to such Trade Date and providing a copy of the Company's audited (or if unavailable, its unaudited) balance sheet for its most recent fiscal year, and an unaudited balance sheet for its most recent fiscal quarter. The notice will state the date, time, and place of an informational meeting ("Informational Meeting"). At the Informational Meeting, representatives of the Company will address administrative and procedural matters with respect to transactions under the Plan. In addition, Eligible Shareholders and Eligible Participants will be afforded the opportunity to review the Company's audited (or if unavailable; its unaudited) financial statement for its most recent fiscal year, an unaudited financial statement for its most recent fiscal quarter, a description of any material corporate developments concerning the Company and the most recent valuation of the Company (together with any bring-down thereof) by the independent third party, and to ask questions of the Company's representatives respecting the business operations and financial condition of the Company. Provisions will be made for Eligible Shareholders and Eligible Participants who cannot attend the Informational Meeting in person to participate by telephone conference call.

The Company will also upon request make the aforementioned financial statements, descriptions of any material corporate developments concerning the Company and the most recent valuation of the Company (together with any bring-down thereof) available in electronic or written form to Eligible Shareholders and Eligible Participants for review at the Company's offices prior to and during the

period when offers to buy and offers to sell the Company's stock may be submitted to the Company prior to the Trade Date.

7. Procedures for Sales and Purchases. The Committee is authorized to prescribe forms to be used in connection with Sale Offers and Purchase Offers under the Plan and a manner in which the forms must be submitted. Sale Offers and Purchase Offers, in order to be valid, must be submitted on the prescribed form, be complete and accurate in all material respects, and be received by the Company during and prior to the close of the period provided by the Committee for the delivery of the forms applicable to a particular Trade Date.

8. Cancellation/Postponement of Trade Date. A Trade Date may be cancelled or postponed by the Committee in connection with the occurrence of any of the following events (if written notice of the occurrence of such event is provided to the Committee by an appropriate officer of the Company) (each such event, a "Cancellation Event"): (1) a material change in the Company's cash position, cash flows, financial performance, and/or investment and capital activities; (2) material changes to financial covenants to which the Company is subject; (3) changes in applicable law; (4) material changes in the capitalization of the Company; (5) the existence of any new material nonpublic information which the Company believes to be in its best interest to keep confidential and not disclose to Eligible Participants; (6) the Committee wishes to set a Trade Date price per share of Common Stock outside the range previously established in the most recent, independent third-party valuation of the Company or bring-down thereof; or (7) the quarterly financial statements that an independent third party used in determining the most recent valuation of the Company or bring-down thereof will not be current as of such Trade Date or any material developments have occurred since such valuation or bring-down thereof was performed and have not been disclosed to Eligible Shareholders and Eligible Participants, and in each such case a bring-down valuation has not been conducted by the independent third party.

9. Number of Shares; Allocation. The total number of Shares of Company Common Stock available for purchase from an Eligible Shareholder and for issuance and sale by the Company to Eligible Participants is subject to certain minimums and maximums, each of which may be increased or decreased by the Committee from time to time. The Plan establishes the minimum number of Shares of Common Stock that may be offered for sale or purchase by any one

person on a Trade Date, which number is currently 500 Shares or the total number of Shares owned by the person making the Sale Offer, whichever is less. In addition, the Plan establishes mechanisms (1) for determining the maximum number of Shares available for purchase from the Company on any given Trade Date and (2) to the extent that the number of Shares subject to Purchase Offers exceeds the total number of Shares subject to Sales Offers, or vice versa, for identifying the Shares that will be sold and purchased so as to assure that smaller shareholders receive a fair allocation, in each case as follows:

- A. Shares offered for sale to the Company equal shares offered to be purchased from the Company. When the number of Shares of Common Stock subject to offers by Eligible Shareholders to sell such stock to the Company (i.e., Sale Offers) is equal to the number of Shares of Common Stock subject to offers by Eligible Participants to buy stock from the Company (i.e., Purchase Offers), the Company must accept all of the Purchase Offers and Sale Offers; provided, however, that the Committee (i) shall reject any such offers if a Cancellation Event has occurred; and (ii) shall reject a specific offer if the Committee determines that (a) the sale or purchase contemplated by such offer would, in its good faith judgment, violate applicable law or any other provision of the Plan; or (b) the person who submitted such an offer is an Ineligible Person.

- B. Shares offered for sale to the Company exceed shares offered for purchase from the Company. When the number of Shares of Common Stock subject to Sales Offers is greater than the number of Shares of Common Stock subject to Purchase Offers, the Company must (1) accept all of the Purchase Offers and (2) accept Sale Offers based on certain Plan limitations described below establishing the maximum number of Shares that may (and are required to) be purchased by the Company pursuant to such Sale Offers and, if the number of Shares subject to such Sale Offers exceeds such maximums, based on an incremental allocation formula under the Plan for calculating the number of Shares to be purchased by the Company from Eligible Shareholders under valid Sale Offers submitted thereby

pursuant to which Sale Offers from smaller shareholders are as a general matter treated preferentially;⁴ provided, however, that the Committee (i) shall reject all such offers if a Cancellation Event has occurred *and* (ii) shall reject a specific offer if the Committee determines that (a) the sale or purchase contemplated by such offer would, in its good faith judgment, violate applicable law or any other provision of the Plan; or (b) the person submitting such offer is an Ineligible Person. When the number of Shares subject to Sale Offers is greater than the number of Shares subject to Purchase Offers, the Plan establishes the maximum number of Shares that can (and must) be purchased by the Company in excess of the number of Shares sold by the Company pursuant to Purchase Offers, which maximum number of Shares is currently equal to shares having the fair market value of \$100,000.00 for Shares to be purchased by the Company in any one year and is subject to increase or decrease by the Committee. The foregoing limitation is, however, qualified by two exclusions (both of which will be applied in a non-arbitrary and non-discriminatory manner by the Committee): (1) the Company is in any event able (and required) to purchase a specific number of Shares set forth in the Plan, which number is currently 500 Shares and is subject to increase or decrease by the Committee, from each Eligible Shareholder submitting a valid Sale Offer on any given Trade Date; and (2) if on any Trade Date the aggregate fair market value of Shares subject to valid Sale Offers minus the aggregate fair market value of Shares subject to Purchase Offers is less than a specific amount set forth in the Plan, which amount is currently \$25,000.00 and is subject to increase or decrease by the Committee, the Company will purchase Shares subject to valid Sale Offers having a fair market value up to

⁴ Under this incremental allocation approach, the number of shares to be purchased from each shareholder submitting a Sale Offer is based initially on the smallest number of shares subject to any valid Sale Offer. If the number of shares to be so purchased is less than the maximum number of shares that must be purchased by the Company pursuant to the terms of the Plan, additional shares will be purchased from each shareholder submitting a Sale Offer based on the smallest number of unpurchased shares subject to any such valid Sale Offer. This process is repeated until the Company has purchased all of the shares that the Company is otherwise required to purchase pursuant to the terms of the Plan in connection with such Trade Date.

\$25,000.00 (as such amount may be increased or decreased) greater than the fair market value of Shares that are sold by the Company under the Plan in connection with valid Purchase Offers.

The Company will announce prior to each Trade Date the total number of Shares that it will buy from Eligible Shareholders in excess of the number of Shares subject to valid Purchase Offers in the event that the Company receives more valid Sale Offers than it receives valid Purchase Offers.

- C. Shares offered for sale to the Company are less than shares offered to be purchased from the Company. When a number of Shares of Common Stock subject to Sale Offers is less than the number of Shares of stock subject to Purchase Offers, the Company must (x) accept all of the Sale Offers and (y) accept Purchase Offers based on an incremental allocation formula under the Plan for calculating the number of Shares to be sold by the Company to each Eligible Participant under valid Purchase Offers submitted thereby (which number of Shares shall in the aggregate equal the number of Shares purchased by the Company under valid Sale Offers *plus* an additional number of Shares equal to the number of Shares purchased by the Company from departing employees since the last Trade Date or within one year, whichever period is shorter) pursuant to which Purchase Offers from smaller shareholders are as a general matter treated preferentially;⁵ provided, however, that the Committee (i) shall reject all such offers if a Cancellation Event has occurred *and* (ii) shall reject a specific offer if the Committee determines that (a) the sale or purchase contemplated by such offer would, in its good faith judgment, violate applicable law or any other provision of the Plan; or (b) the person submitting such offer is an Ineligible Person. In no

⁵ The incremental allocation approach used when the number of shares of Common Stock subject to Sale Offers is less than the number of shares of stock subject to Purchase Offers operates in the same manner as the incremental allocation approached used when the number of shares of Common Stock subject to Sale Offers is greater than the number of shares subject to Purchase Offers, which is described at Note 4, supra.

event can the number of Shares sold by the Company on any given Trade Date exceed the number Shares purchased by the Company on such date *plus* an additional number of Shares equal to the number of Shares purchased by the Company from departing employees since the last Trade Date or within one year, whichever period is shorter.

10. Announcement of Allocation Requirements and Plan Terms. The Plan will provide that its allocation formulas and requirements (e.g., that smaller shareholders may receive preferential treatment under the Plan's incremental allocation formulas) will be disclosed and described to Eligible Shareholders and Eligible Participants before each Trade Date and that these allocation procedures cannot be changed unless the changes are disclosed to all Eligible Shareholders and Eligible Participants beforehand. All Eligible Shareholders and Eligible Participants will be adequately informed about how the Plan, including any amendment thereto, will work (e.g., by providing them with a copy of the Plan and having representatives of the Company available to answer questions about the Plan).

11. Requirements of Committee Membership. The Plan will provide that Committee members cannot purchase or sell under the Plan on any Trade Date while serving on the Committee.

12. Repurchased Shares. Shares purchased by the Company under the Plan shall be deemed to be reserved and to be available only for re-issuance under the Plan or under another Company compensatory benefit plan within the meaning of Rule 701.

13. No Similar Activities; No Commissions; Termination of Plan. The Company will not engage in similar activities with respect to securities of any other issuers, nor will it solicit the purchase or sale of any of its Common Stock under the Plan. The Company will not receive any commission or other compensation with respect to any Common Stock purchase or sale under the Plan, and no fees will be charged to Eligible Shareholders or Eligible Participants with respect to any such transaction. The Company will absorb all administrative and related costs of the Plan. The Plan will automatically terminate immediately prior to the consummation of an initial public offering by the Company.

14. Stock Transfer Restrictions. Stock purchased under the Plan will be subject to the same contractual transfer limitations for Shares acquired under the Company's other employee stock plans,⁶ as well as restrictions on resale contemplated by Rule 701(g) under the Securities Act and applicable registration provisions of state securities laws.

15. Employee Administrators. In addition to the Committee, certain employees of the Company (hereinafter referred to as "Employee Administrators") will be designated to oversee and administer the Plan. The Employee Administrators will, together with the members of the Committee, have substantial responsibilities unrelated to the Plan. Their working time at the Company will be devoted substantially to the performance of their other regular Company-related duties. Each of the Employee Administrators and Committee members will perform their responsibilities related to the Plan as a part of, and not to the exclusion of, their other regular duties. None of the Employee Administrators or members of the Committee will be compensated in connection with the Plan by the payment of commissions or other remuneration based either directly or indirectly on the purchase or sale of the Company's Common Stock under the Plan.

16. Qualifications of Employee Administrators. None of the persons who will serve as Employee Administrators or as Committee members will be associated with a broker or a dealer or be subject to any "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act. Each of the persons who will initially act as Employee Administrators will have been hired by the Company prior to the establishment and implementation of the Plan to perform other duties. The Company will not hire any employees specifically for the purposes of overseeing or administering the Plan.

DISCUSSION

Section 15(a) of the Exchange Act requires that any broker or dealer that is not a natural person, or who is a natural person not associated with a broker or dealer that is a person other than a natural person, register as such under the Exchange Act. The term "broker" is generally defined under Section 3(a)(4)(A) of the Exchange Act to mean "any person engaged in the business of effecting

⁶ See Note 1, *supra*.

transactions in securities for the account of others.” The term “dealer” is generally defined under Section 3(a)(5)(A) of the Exchange Act to mean “any person engaged in the business of buying and selling securities for such person’s own account through a broker or otherwise.” However, a dealer “does not include a person that buys or sells securities for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.” Section 3(a)(5)(B) of the Exchange Act.

As set forth in the above-quoted definition under Section 3(a)(4) of the Exchange Act, in order to be a broker, a person must (a) “engage in the business” of effecting transactions in securities and (b) do so “for the account of others.” Likewise, the definition of “dealer” under Section 3(a)(5) of the Exchange Act contemplates that purchases and sales for one’s own account be part of the person’s regular course of business.

The purpose of the Plan is to offer employees an opportunity to acquire or increase their equity stake in the Company and provide liquidity to them and other Eligible Shareholders of the Company. The Company will be acting as the contra party to, and be a principal in each sale and each purchase entered into under the Plan (either as a seller or a buyer). It will therefore be selling and purchasing Shares of its Common Stock for its own account and not for the account of others. It will purchase and sell only its own stock, and will buy from the Eligible Shareholders and sell to only its employees and other eligible participants. The Company will not receive any compensation with respect to any securities transaction in connection with the Plan or charge any fee with respect to any such transaction. Further, the Company will not realize any gain through a mark-up or mark-down on the Common Stock it purchases or sells because all purchases and sales will be made at the price-per-share fixed for transactions on the Trade Date. That price will be set by Committee members who do not participate in the Plan, within a range established by an independent third party.

With regard to the Committee members and Employee Administrators, they will not receive any special compensation or other direct or indirect remuneration in connection with their responsibilities in administering the Plan. No commissions will be paid to the Company or its employees in connection with the Plan, and Committee members will not be allowed to participate in the Plan during their tenure on the Committee. For both Employee Administrators and Committee

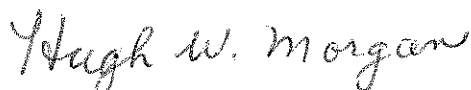
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members, any involvement in administering the Plan will arise within the context of their regular employment or their membership on the Board and/or the Committee, as the case may be. They will not be associated persons of a broker-dealer or otherwise employed by the securities industry at the time of their activities in connection with the Plan, and none will be subject to statutory disqualification. At the time of their activities in connection with the Plan, their participation in securities purchases and sales for the account of others will be limited to the context of the Plan, which has been structured to meet the definition of a "compensatory benefit plan" under Rule 701 and which involves only the purchase and sale of the Company's own non-public securities.

On the basis of the foregoing and in light of similar relief provided in the SEC No-Action Letter regarding TEOCO Corporation (available October 20, 2005), we respectfully request that the Staff assure Pro2Serve that it will not recommend that the Commission take any enforcement action if the Company implements the above-described Plan without itself registering as a broker or a dealer, and without any of the Employee Administrators or the members of the Committee registering as a broker under the Exchange Act. Should you have any questions or need additional information, please contact the undersigned. If for any reason you do not concur with the views expressed in this letter, we respectfully request an opportunity to discuss the matter with you prior to any written response.

Very truly yours,



Hugh W. Morgan

HWM/jas

cc: Brian A. Bussy

Gena Lai