

STAFF REPORT



ITEM NO. 11
CITY OF OCEANSIDE

DATE: January 20, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT WITH RECON ENVIRONMENTAL INCORPORATED FOR CONSTRUCTION MONITORING, MITIGATION MONITORING, AND MITIGATION MAINTENANCE FOR THE LOMA ALTA CREEK DETENTION BASIN AT EL CAMINO REAL**

SYNOPSIS

Staff recommends that the City Council approve a professional services agreement with RECON Environmental Incorporated of San Diego, in the amount of \$70,522 for construction monitoring, mitigation monitoring, and mitigation maintenance for Loma Alta Creek Detention Basin at El Camino Real; and authorize the City Manager to execute the agreement.

BACKGROUND

The Loma Alta Creek Detention Basins project consists of three detention basins along Loma Alta Creek. Located at Mesa Drive and El Camino Real, at El Camino Real and Sprinter Rail Line, and at Rancho Del Oro and Sprinter Rail Line, the basins are planned to alleviate downstream flooding. When completed, the basins will remove the flood insurance requirements from many residences downstream.

The first of the three detention basins, Mesa Drive and El Camino Real, was completed in 2008. On August 12, 2009, the City Council approved the plans and specifications for the El Camino Real Detention Basin Project, the second of the three detention basins; and on December 16, 2009, the City Council awarded the contract to KIP Incorporated of Murrieta for the construction of the El Camino Real Detention Basin.

ANALYSIS

In order to mitigate impacts from the Loma Alta Detention Basins Project, a mitigation area was created at the northeast corner of Rancho Del Oro Drive and Oceanside Boulevard. The City is obligated to monitor and maintain the mitigation site for five years. Resource Agencies permitting requirements for the construction of the El Camino Real Detention Basin require biological monitoring and surveys.

Staff requests that the City Council approve the professional service agreement with RECON Environmental Incorporated as a sole-source procurement as the project biologist for construction of the El Camino Real Detention Basin Project. The January 24, 2008, "Procurement of Goods and Services Directive" provides that the City Council make any sole-source procurement directive for amount over \$50,000. RECON has unique knowledge and experience with this project. RECON was the project biologist for the Loma Alta Creek Detention Basins Project, the design and construction of completed Garrison Detention Basin Project, and design and permitting of El Camino Real Detention Basin Project for the City. RECON's scope of work includes updating the wildlife studies to support renewal of the Resource Agencies permits for the detention basins. RECON's hourly rates are in-line with other similar professionals.

FISCAL IMPACT

The estimated project costs are as follows:

Estimated Construction Cost	\$1,437,393
Construction & Mitigation Monitoring	<u>\$ 70,522 *</u>
Total	\$1,507,915

*The subject request relates only to this aspect of the project.

The current balance in the CIP project account (905745100520) has a combined balance of approximately \$2.9 million in current funding and FY 2008-09 carry forward. These funds are not encumbered; therefore, sufficient funds are available.

INSURANCE REQUIREMENTS

The City's standard insurance requirements have been met and are currently in effect.

COMMISSION OR COMMITTEE REPORT

The Drainage Subcommittee of the Utilities Commission has been advised of the detention basin, most recently on January 13, 2004, and they approved of its design and need.

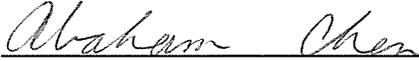
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve a professional services agreement with RECON Environmental Incorporated of San Diego, in the amount of \$70,522 for construction monitoring, mitigation monitoring, and mitigation maintenance for Loma Alta Creek Detention Basin at El Camino Real; and authorize the City Manager to execute the agreement.

PREPARED BY:



Abraham Chen
Associate Engineer

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
George Buell, Development Services Director
Scott O. Smith, City Engineer
Teri Ferro, Financial Services Director

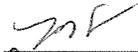








Exhibit A – RECON Cost Proposal
Exhibit B – Professional Service Agreement with RECON

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: (Loma Alta Creek Detention Basin at El Camino Real – 905745100520)

THIS AGREEMENT, dated _____, 2010 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and RECON Environmental, Incorporated, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows:
Provide construction monitoring, mitigation monitoring, and mitigation maintenance for the El Camino Real Detention Basin project, in the City of Oceanside, California. For more detail, see Exhibit "A".
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City Engineer. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the City Engineer. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial

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general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

<u>Comprehensive General Liability Insurance</u> (bodily injury and property damage)	
Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*
<u>Commercial General Liability Insurance</u> (bodily injury and property damage)	
General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000
<u>Automobile Liability Insurance</u>	\$ 1,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as

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A-X or higher by A.M. Best.

- 4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of CONSULTANT'S work, including the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether

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the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees founded upon, resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$70,522.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the City Engineer. CONSULTANT shall obtain approval by the City Engineer prior to performing any work, which results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the Engineer within 60 days from authorization to begin work by the City.

9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

12. **SIGNATURES.** The individuals executing this Agreement represent and warrant

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that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

RECON Environmental, Incorporated

CITY OF OCEANSIDE

By: *Roberta Herdes*
Name/Title
Roberta Herdes, Vice President

By: _____
City Manager

Date: 12/18/09

Date: _____

By: *Lee Sherwood*
Name/Title
Lee Sherwood, Vice President

APPROVED AS TO FORM:

Date: 12/18/09

Robert Hamilton, ASST.

953121299
Employer ID No.

City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

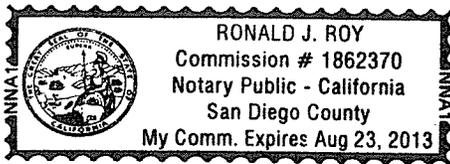
On Dec. 18, 2009 before me, Ronald J. Roy,
Date Here Insert Name and Title of the Officer

personally appeared Roberta Ann Herdes
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature: Ronald J. Roy
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Individual

Partner — Limited General Partner — Limited General

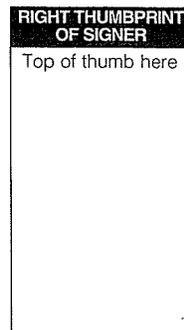
Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

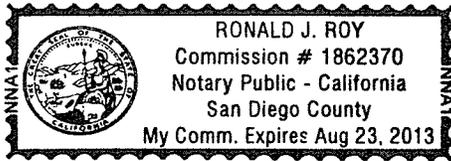
On Dec. 18, 2009 before me, Ronald J. Roy
Date Here Insert Name and Title of the Officer

personally appeared Lee Allen Sherwood
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature: Ronald J. Roy
Signature of Notary Public

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Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Individual

Partner — Limited General Partner — Limited General

Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

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RIGHT THUMBPRINT OF SIGNER

Top of thumb here

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San Diego, CA 92101-2358
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www.recon-us.com

525 W. Wetmore Rd., Suite 111
Tucson, AZ 85705
P 520.325.9977 F 520.293.3051

RECON

A Company of Specialists

December 1, 2009

Abraham Chen
City of Oceanside
300 N. Coast Highway
Oceanside, CA 92054

Reference: **El Camino Real Detention Basin Construction Monitoring, Mitigation Monitoring, and Maintenance (RECON 2998)**

Dear Mr. Chen:

RECON is pleased to submit the enclosed scope of work and cost proposal to provide a biologist to monitor construction activities associated with completion of the detention basin at El Camino Real and Oceanside Boulevard, monitor the existing wetland mitigation site during year five, and provide habitat restoration services for the existing mitigation project located north of Rancho Del Oro Drive in the City of Oceanside. Tasks will include the following:

Construction Monitoring:

- Attend meetings with the client and resource agencies, as needed, per the limitations outlined in the scope of work.
- Conduct a pre-construction contractor education meeting to address sensitive biological resource issues.
- Prepare and submit up to six construction monitoring status letters.
- Provide a biologist to monitor construction activities for the wall construction at the detention basin per the limitations outlined in the scope of work.
- *Optional:* Conduct coastal California gnatcatcher (three) and least Bell's vireo (eight) protocol surveys if construction extends into the breeding season of these bird species.

Mitigation Monitoring:

- Conduct monthly qualitative monitoring visits to the mitigation site for one year.
- Provide documentation for the mitigation site, including photographic and GPS data.
- Conduct one quantitative monitoring visit to collect transect data.
- Prepare an annual report.

Mitigation Maintenance:

- The goal of this maintenance will be to prepare the mitigation site for final approval by the regulatory agencies following the one year maintenance period. All maintenance activities will be conducted under the supervision of a restoration biologist.
- Conduct an initial weed treatment visit through the removal of dead thatch and weeds.

- If needed, plant up to 200 one-gallon container plants to fill in bare areas within the mitigation site. Planting would occur in the winter of 2009-2010, after the onset of the rainy season, to take advantage of wet conditions.
- Conduct follow-up weed treatments throughout a one year maintenance period. Weeds will be removed by hand, with line trimmers, and through the use of herbicides. All herbicide applications will be conducted under the supervision of a person holding a California Qualified Applicators License (QAL) with a registration in the appropriate land use category. In addition, only herbicides that are compatible for use in aquatic settings will be used within this project site.
- Once the mitigation effort is approved by the resource agencies, all above-ground parts of the irrigation system will be removed from the site.

Cost Breakdown:

A breakdown of the cost by task is as follows:

Meetings	\$4,284
Pre-construction contractor education	\$960
Monitoring status letters	\$3,742
Construction monitoring	\$20,736
Monthly qualitative mitigation monitoring	\$7,344
Photo Documentation/GPS	\$1,242
Quantitative monitoring	\$2,268
Annual Report	\$3,906
Initial site cleanup	\$4965
Planting 200 container plants	\$1727
Follow-up weeding visits	\$5218
Irrigation System Removal	\$2520
<u>Supervision and Field Crew Coordination</u>	<u>\$783</u>
Sub-total	\$59,695
Optional bird surveys	
Gnatcatcher	\$4,130
Least Bell's vireo	\$6,697
TOTAL	\$70,522

The estimated total cost to complete all of the above tasks is \$70,522. This includes the optional bird surveys and expenses such as equipment rental, waste disposal, and herbicides. If you would like to proceed with the work please sign the enclosed agreement and return to the attention of Theresa Robinson, trobinson@recon-us.com. Thank you and please call if you have any questions.

Sincerely,


Gerry Scheid
Senior Biologist

GAS: aab
2998/Chg10cov.doc

Biological Construction/Mitigation Monitoring

1. Prepare Workplan/Research Design. *BM1010*
2. Attend up to sixteen (16) hours of meeting with client. *BM1020*
3. Attend up to eight (8) hours of meeting with Agency. *BM1030*
4. Write and submit up to six (6) construction monitoring status letters. *BM1040*
5. Conduct a pre-construction contractor education meeting to review with the contractor the sensitivity of the biological resources in the project area, limitations of work, location of staging areas, and environmental permit conditions. *BM1050*
6. Provide a biologist for up to 208 hours to monitor construction activities. *BM1060*
7. Conduct monthly qualitative monitoring visits to the mitigation site during Year 5 to evaluate the general status of the site conditions, need for maintenance, and to document plant and wildlife species at the site. *BM1070*
8. Provide photographs from fixed locations (GPS points) to show the progress of plant growth at the mitigation site for Year 5. *BM1080*
9. Perform quantitative monitoring during the spring of 2010 to collect transect data on vegetation cover and species composition. *BM1090*
10. Prepare an annual report. At the completion of Year 5 (Fall of 2010), an annual report will be prepared and submitted to the client and agencies describing maintenance and monitoring tasks performed, results of qualitative and quantitative monitoring, progress towards reaching final success criteria, recommended remedial actions, and any other necessary recommendations that may improve the project's success. *BM 1100*

Mitigation Maintenance

1. Provide up to 125 labor hours to cut exotic vegetation and dethatch the site. Cutting may include the use of chain saws and pruning shears to remove perennial plants and dethatching will include the cutting and removal of herbaceous non-native vegetation. This will be accomplished by hand crews using line trimmers and rakes. All cut material will be hauled offsite for disposal. *R0040*
2. Provide up to 126 labor hours to remove unwanted vegetation from the project site. Vegetation treatment will include the use of herbicides to treat unwanted

weeds. All herbicide applications will be conducted under the supervision of a California Licensed Applicator with a registration in the appropriate land use category. *R0041*

3. Provide up to 64 labor hours to remove the temporary above-ground irrigation system. All irrigation system parts will be hauled offsite for reuse or disposal at the client's digression. *R0050*
4. Provide up to 27 labor hours to layout and plant 200 container plants. Conventional planting techniques for revegetation sites will be used and will include digging a planting hole twice the size of the container plant and backfilling with clean native soil. The planting layout will be under the direction of the Restoration Biologist. *R0060*
5. Provide up to nine (9) labor hours to qualitatively monitor the mitigation site throughout the one year maintenance period. *R0080*