ITEM NO. 11

STAFF REPORT

CITY OF OCEANSIDE

DATE: October 14, 2009

TO: Honorable Mayor and City Council Members

FROM: Water Utilities Department

SUBJECT: **AMENDMENT 1 IN THE AMOUNT OF $15,497.98 TO THE PROFESSIONAL SERVICES AGREEMENT WITH J.F. WHITE CONTRACTING COMPANY FOR THE OCEAN OUTFALL ANALYSIS—REMOTE OPERATED VEHICLE INSPECTION PROJECT**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 in the amount of $15,497.98 to the professional services agreement with J.F. White Contracting Company of Framingham, Massachusetts, for the Ocean Outfall Analysis—Remote Operated Vehicle Inspection project located offshore north of the mouth of Loma Alta Creek (Exhibit A); and authorize the City Manager to execute the amendment.

BACKGROUND

On September 13, 2006, the City Council approved a professional services agreement for $248,300 with J.F. White Contracting Company for the analysis of the Oceanside Ocean Outfall (OOO) by remote-operated vehicle inspection.

Due to the condition of the land outfall along Oceanside Boulevard this project had to be put on hold until the completion of the Emergency Land Outfall Replacement project.

The City of Oceanside owns and operates the Oceanside Ocean Outfall (OOO) which begins at the La Salina Wastewater Treatment Plant site just north of the mouth of Loma Alta Creek and extends southwesterly approximately 8,850 feet offshore to a depth of approximately 100 feet. The City of Oceanside's wastewater effluent from the San Luis Rey Wastewater Treatment Plant, the La Salina Wastewater Treatment Plant, and the brine from the groundwater purification facility is discharged into the ocean through the outfall pipeline. Additionally, effluent from Fallbrook Public Utilities District and Camp Pendleton discharge into the OOO. The ocean outfall was constructed in 1972. It is a 38-inch steel pipe with a 1-inch-thick cement mortar interior lining and 2.75-inch-thick cement mortar outer jacket, and has a 36-inch internal diameter. The OOO terminates with a 230-foot diffuser collinear with the rest of the outfall and extends to a depth of approximately 108 feet. The diffuser has fourteen 5-inch diameter ports and ten 4-inch diameter ports.

ANALYSIS

There is an increase in the cost of service in the amount of $15,497.98 for a total contract price of $263,797.98 per Amendment 1 from the delay in starting the project due to the Emergency Land Outfall Replacement project.

On April 19, 2006, the City Council authorized the Public Works Director to call for bids for the project. No bids were received. The Water Utilities Department has found that contractors specializing in this type of work do not have contractor licenses. After determining that this should be a service-oriented agreement, a request for proposals was solicited. The Department received two proposals, one from Hibbard Inshore and one from J.F. White Consulting Company, and one letter declining to respond to the request for proposal solicitation. The proposals were evaluated and the proposal received from J.F. White Contracting Company of Framingham, Massachusetts, in the amount of $248,300 was selected.

FISCAL IMPACT

The Ocean Outfall Analysis funds (909548900726.5325 and 908548600715.5325) have a combined FY 2008-09 carry forward balance of $282,204, therefore adequate funds are available.

COMMISSION OR COMMITTEE REPORT

The Utilities Commission reviewed and approved the award of the original contract at its meeting on March 21, 2006.

CITY ATTORNEY'S ANALYSIS

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

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

RECOMMENDATIONS

Staff recommends that the City Council approve Amendment 1 in the amount of $15,497.98 to the professional services agreement with J.F. White Contracting Company of Framingham, Massachusetts, for the Ocean Outfall Analysis—Remote Operated Vehicle Inspection project located offshore north of the mouth of Loma Alta Creek (Exhibit A); and authorize the City Manager to execute the amendment.

PREPARED BY:

Greg Blakely
Administration Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Lonnie Thibodeaux, Water Utilities Director

Teri Ferro, Financial Services Director

Exhibit A - Site Map
Exhibit B – Amendment 1
Attachment 1 – Original Professional Services Agreement

Oceanside Ocean Outfall

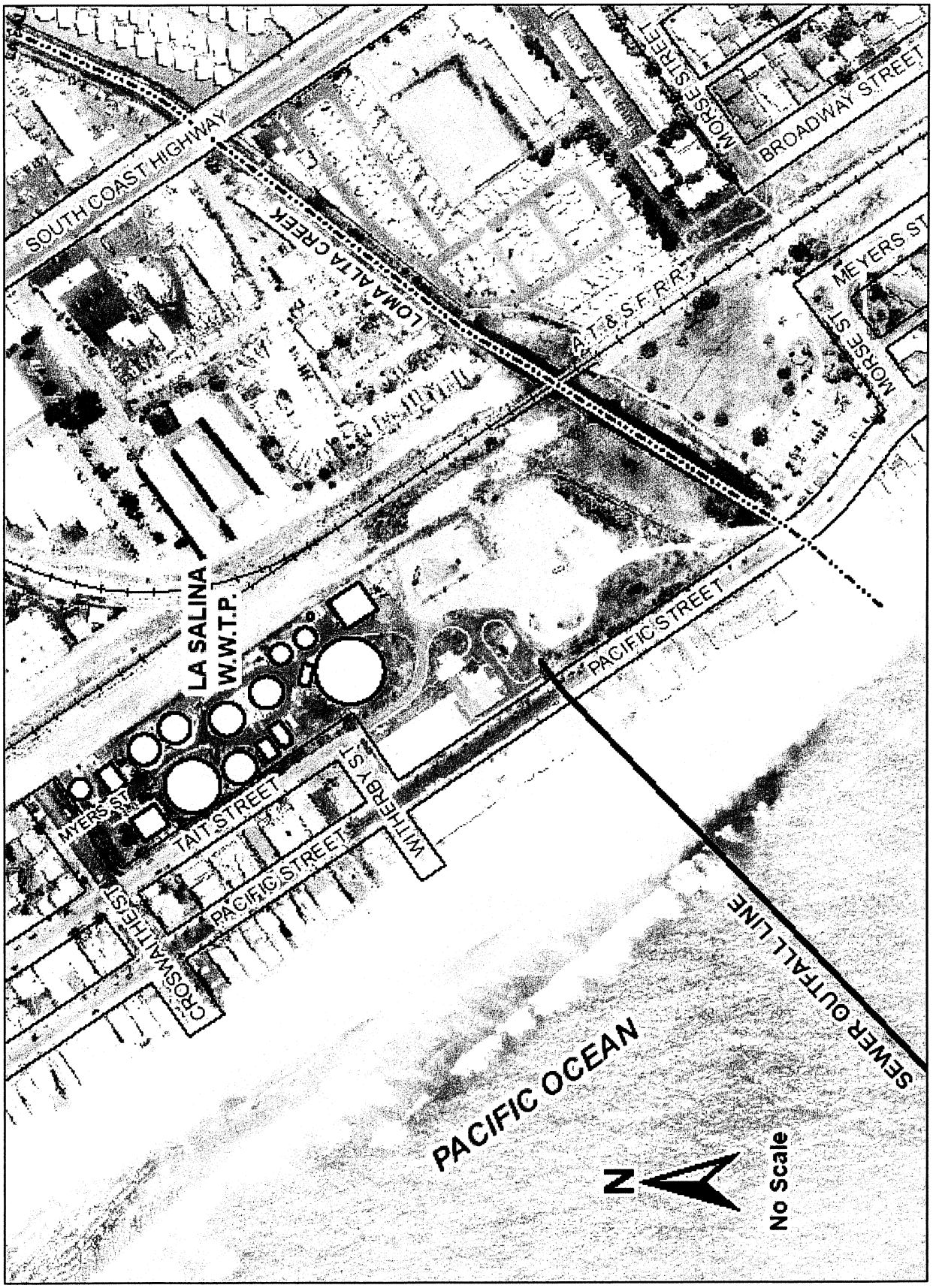

EXHIBIT B

CITY OF OCEANSIDE
AMENDMENT 1 TO
PROFESSIONAL SERVICES AGREEMENT

PROJECT: OCEAN OUTFALL ANALYSIS-REMOTE OPERATED VEHICLE INSPECTION PROJECT – 909548900726/908548600715

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment") is made and entered this _____ day of _____2009, by and between the City of Oceanside, a municipal corporation, hereinafter designated as "CITY", and J.F. WHITE CONTRACTING COMPANY of Framingham, Massachusetts, hereinafter designated as "CONSULTANT".

RECITALS

WHEREAS, CITY and CONSULTANT are the parties to that certain Professional Services Agreement dated September 13, 2006, hereinafter referred to as the "Agreement", wherein CONSULTANT agreed to provide certain services to the CITY set forth therein;

WHEREAS, the parties desire to amend the Agreement to provide for changes and/or modifications to Section 1, Scope of Work and Section 10, Compensation, as a result of an increase in CONSULTANT's hourly rates.

AMENDMENT

NOW, THEREFORE, as set forth herein, the parties hereto do mutually agree that the Agreement shall be amended as follows:

1. Section 10, Compensation, shall be amended to reflect the total maximum amount payable under this contract is increased by $15,497.98, from $248,300 to $ 263,797.98 for all work performed in accordance with the Agreement dated September 13, 2006.

2. Exhibit A to the Agreement is hereby amended to include the Revised Contract Pricing dated August 28, 2009, which is attached hereto.

3. Except as expressly set forth in the Amendment, the Agreement shall remain in full force and effect and is hereby ratified and reaffirmed.

SIGNATURES. The individuals executing this Amendment represent and warrant 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 being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures this _____ day of _____, 2009.

J.F. WHITE CONTRACTING COMPANY

By: James F. Clark

By: James F. Clark
Vice President

Employer ID No.

CITY OF OCEANSIDE

By: _____
Peter A. Weiss, City Manager

APPROVED AS TO FORM:

Asst. City Attorney
City Attorney

NOTARY ACKNOWLEDGEMENTS OF CONSULTANT MUST BE ATTACHED.

LORI J. RYAN
MY COMM. EXPIRES FEB. 25, 2016
COMMONWEALTH OF MASSACHUSETTS
NOTARY PUBLIC

LORI J. RYAN
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
February 25, 2016

The Commonwealth of Massachusetts

April 17, 2009.

Personally appeared Lori J. Ryan

and took and subscribed the oaths prescribed by the Constitution of this Commonwealth, and a Law of the United States, to qualify the above named to execute the trust reposed in this individual by the foregoing Commission.

Before Dorothy A. Dean
Catherine Raulinart

} *Commissioners to Qualify Public Officers*

NOTE. *A Certificate of your qualification should be forwarded to the Secretary of the Commonwealth forthwith, by the officers before whom the oaths are taken.*
OFFICE OF THE SECRETARY, BOSTON.

In case of error occurring in name or residence, immediate notice should be given to the Secretary of the Commonwealth, and the Commission returned for correction.

(SECTION 12 OF CHAPTER 30, GENERAL LAWS)

SECTION 12. A person appointed to an office by the governor with or without the advice and consent of the council shall be notified of his appointment by the state secretary and his commission delivered to him upon qualification, and if he does not, within three months after the date of such appointment, take and subscribe the oaths of office, his appointment shall be void, and the secretary shall forthwith notify him thereof, and shall also certify said facts to the governor. This section shall be printed on every such commission.

(SECTION 9 OF CHAPTER 222, GENERAL LAWS)

SECTION 9. Whoever presumes to act as a justice of the peace or notary public after the expiration of his commission, and after receiving notice of such expiration, shall be punished by a fine of not less than one hundred nor more than five hundred dollars.

Upon change of name by probate, divorce or marriage, commission becomes void until re-registration of change of name is made with the Secretary of the Commonwealth and re-registration fee paid.

The Commonwealth of Massachusetts
William Francis Galvin
Secretary of the Commonwealth

Lori J. Ryan

is a duly appointed Notary Public

of the

Commonwealth of Massachusetts

Commission expires: February 25, 2016

Exhibit A

J.F. WHITE CONTRACTING COMPANY

10 BURR STREET · FRAMINGHAM, MASSACHUSETTS 01701-9020
TELEPHONE (508) 879-4700 · FAX (617) 558-0460

Mr. Greg Blakely
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

28 August 2009

Re: Ocean Outfall Remote Operated Vehicle Inspection; 722-868252
REVISED CONTRACT PRICING

Dear Mr. Blakely:

Your letter dated 15 March 2007 informed us that the City of Oceanside would like to retain our services to inspect the Ocean Outfall after unanticipated shoreside repairs had been completed. We subsequently agreed to accommodate this project postponement but requested a Change Order to compensate us for increased "demonstrable wage, fuel, and transportation charges".

Our original Proposal Section 10 (Encl. 1) provided an itemization of our proposed budget which included the man hours allocated to each work item. Enclosure 2 calculates the **wage increases totaling $13,926.14** which will be incurred by J. F. White if the outfall inspection is performed this fall. Please recognize that our annual union wage increases occur on or about August first of each year. The equipment rental component of our original budget will not increase.

Our original cost estimate included a total of $39,249.01 allocated to shipping, travel, lodging, per diem, small tools and supplies, etc. We believe that it is fair to estimate these costs have escalated by 1.5% per year for 30 months, equivalent to a total increase of 3.75%. The dollar value of this 3.75% **inflation is $1,471.84**.

In accordance with your request we also renewed our City of Oceanside Business License in 2008 and 2009 solely for the purpose of this contract at an **additional cost of $100.00**.

We request a total Change Order price increase to our contract of **$15,497.98**. Please recognize, however, that the City of Oceanside has already paid $28,300.00 of the original contract price for "Preliminary engineering, planning and submittals" which will not be incurred again.

Respectfully,

J. F. WHITE CONTRACTING COMPANY

James F. Clark
Vice President, Diving Division

Encl.: (1) Original Budget
(2) Calculation of wage increases

I:\files\Diving\Year 2007 Diving Jobs\7007-002; Oceanside Outfall, MA\Correspondence to Owner-Engineer\G. Blakely; 28AUG09.doc

10. Proposed Budget

43) Preliminary engineering, planning, meetings, and submittal **$ 28,300**
Project Manager; one month
Project Engineer; one month

44) **Mobilization of equipment in Stoughton Yard, MA** **$ 18,700**
Project Manager; 2 days
Project Engineer; 2 days
Diving Supervisor; 40 hours
Dive Team Foremen; 80 hours

45) **Mobilization of equipment in Alameda, CA** **$ 26,400**
Project Manager; 2 days
Project Engineer; 2 days
Diving Supervisor; 24 hours
ROV Technicians; 80 hours

46) Personnel travel and equipment transport to Oceanside **$ 25,500**
Project Manager; 1 day
Project Engineer; 1 day
Diving Supervisor; 16 hours
Divers; 64 hours
ROV Technicians; 24 hours

47) **Set-up of equipment and site preparation in Oceanside** **$ 12,800**
Project Manager; 2 days
Project Engineer; 2 days
Diving Supervisor; 16 hours
Divers; 32 hours
ROV Technicians; 32 hours

48) 24-hour ROV outfall inspection with two 12-hour work shifts **$ 51,000**
Project Manager; 1 day
Project Engineer; 1 day
Diving Supervisor; 16 hours ST; 8 hours OT
Divers; 64 hours ST; 32 hours OT
Operating Engineer (crane); 16 hours ST, 8 hours OT
ROV Technicians; 24 hours ST; 12 hours OT

49) Demobilization of equipment and depart Oceanside **$ 11,000**
Project Manager; 2 days
Project Engineer; 1 day
Diving Supervisor; 16 hours
Divers; 24 hours
ROV Technicians; 24 hours

50) Personnel travel and equipment transport from Oceanside **$ 25,500**
Project Manager; 1 day
Project Engineer; 1 day
Diving Supervisor; 16 hours
Divers; 64 hours
ROV Technicians; 24 hours

51) Demobilization and clean-up of equipment in Alameda, CA and Stoughton, MA **$ 12,800**
Project Manager; 1 day
Project Engineer; 1 day
Diving Supervisor; 16 hours
Diver Team Foreman; 24 hours
ROV Technicians; 24 hours

52) Submittal of final deliverables **$ 36,300**
Project Manager; 2 weeks
Project Engineer; 2 weeks
ROV Technician; 2 weeks

53) PROJECT TOTAL **$ 248,300**

**** Please not that this proposal does not include Professional Errors and Omissions Insurance coverage.**

CITY OF OCEANSIDE - ROV INSPECTION

	ESTIMATED MANHOURS	AUG-06 HOURLY RATES	TOTAL	AUG-09 HOURLY RATES	TOTAL	2009 INCREASE TOTAL
• Preliminary engineering, planning, meetings and submittals						
Project Manager; one month	160	$ 78.13	PAID	$ -	$ -	$ -
Project Engineer; one month	160	$ 59.38		$ -	$ -	$ -
• Mobilization of equipement in Stoughton Yard, MA						
Project Manager; 2 days	20	$ 78.13	$ 1,562.60	$ 85.00	$ 1,700.00	$ 137.40
Project Engineer; 2 days	20	$ 59.38	$ 1,187.60	$ 65.63	$ 1,312.60	$ 125.00
Dive Supervisor; 40 hours	40	$ 77.94	$ 3,117.60	$ 91.38	$ 3,655.20	$ 537.60
Dive Team Foremen; 80 hours	80	$ 61.73	$ 4,938.40	$ 72.14	$ 5,771.20	$ 832.80
• Mobilization of equipement in Alameda, CA						
Project Manager; 2 days	20	$ 78.13	$ 1,562.60	$ 85.00	$ 1,700.00	$ 137.40
Project Engineer; 2 days	20	$ 59.38	$ 1,187.60	$ 65.63	$ 1,312.60	$ 125.00
Dive Supervisor; 24 hours	24	$ 77.94	$ 1,870.56	$ 91.38	$ 2,193.12	$ 322.56
ROV Technicians; 80 hours	80	$ 61.73	$ 4,938.40	$ 72.14	$ 5,771.20	$ 832.80
• Personnel travel and equipment transport to Oceanside						
Project Manager; 1 days	10	$ 78.13	$ 781.30	$ 85.00	$ 850.00	$ 68.70
Project Engineer; 1 days	10	$ 59.38	$ 593.80	$ 65.63	$ 656.30	$ 62.50
Dive Supervisor; 16 hours	16	$ 77.94	$ 1,247.04	$ 91.38	$ 1,462.08	$ 215.04
Divers; 64 hours	64	$ 72.78	$ 4,657.92	$ 85.33	$ 5,461.12	$ 803.20
ROV Technicians; 24 hours	24	$ 61.73	$ 1,481.52	$ 72.14	$ 1,731.36	$ 249.84
• Set-up of equipement and site preparation in Oceanside						
Project Manager; 2 days	20	$ 78.13	$ 1,562.60	$ 85.00	$ 1,700.00	$ 137.40
Project Engineer; 2 days	20	$ 59.38	$ 1,187.60	$ 65.63	$ 1,312.60	$ 125.00
Dive Supervisor; 16 hours	16	$ 77.94	$ 1,247.04	$ 91.38	$ 1,462.08	$ 215.04
Divers; 32 hours	32	$ 72.78	$ 2,328.96	$ 85.33	$ 2,730.56	$ 401.60
ROV Technicians; 32 hours	32	$ 61.73	$ 1,975.36	$ 72.14	$ 2,308.48	$ 333.12
• 24-hour ROV outfall inspection with two 12-hour work shifts						
Project Manager; 1 days	10	$ 78.13	$ 781.30	$ 85.00	$ 850.00	$ 68.70
Project Engineer; 1 days	10	$ 59.38	$ 593.80	$ 65.63	$ 656.30	$ 62.50
Dive Supervisor; 16 hours ST, 8 hours OT	24	$ 108.33	$ 2,977.24	$ 141.23	$ 3,389.52	$ 412.28
Divers; 64 hours ST, 32 hours OT	96	$ 98.59	$ 11,042.08	$ 130.58	$ 12,535.68	$ 1,493.60
Operating Engineer (crane); 16 hours ST, 8 hours OT	24	$ 52.78	$ 1,477.84	$ 61.66	$ 1,480.32	$ 2.48
ROV Technicians; 24 hours ST, 12 hours OT	36	$ 61.73	$ 1,728.44	$ 72.14	$ 2,597.04	$ 868.60
SUBTOTAL			$ 56,029.20		$ 64,599.36	$ 8,570.16

CITY OF OCEANSIDE - ROV INSPECTION

	ESTIMATED MANHOURS	AUG-06 HOURLY RATES	TOTAL	AUG-09 HOURLY RATES	TOTAL	2009 INCREASE TOTAL
• Demobilization of equipment and depart Oceanside						
Project Manager; 2 days	20	$ 78.13	$ 1,562.60	$ 85.00	$ 1,700.00	$ 137.40
Project Engineer; 1 days	10	$ 59.38	$ 593.80	$ 65.63	$ 656.30	$ 62.50
Dive Supervisor; 16 hours	16	$ 77.94	$ 1,247.04	$ 91.38	$ 1,462.08	$ 215.04
Divers; 24 hours	24	$ 72.78	$ 1,746.72	$ 85.33	$ 2,047.92	$ 301.20
ROV Technicians; 24 hours	24	$ 61.73	$ 1,481.52	$ 72.14	$ 1,731.36	$ 249.84
• Personnel travel and equipment transport from Oceanside						
Project Manager; 1 days	10	$ 78.13	$ 781.30	$ 85.00	$ 850.00	$ 68.70
Project Engineer; 1 days	10	$ 59.38	$ 593.80	$ 65.63	$ 656.30	$ 62.50
Dive Supervisor; 16 hours	16	$ 77.94	$ 1,247.04	$ 91.38	$ 1,462.08	$ 215.04
Divers; 64 hours	64	$ 72.78	$ 4,657.92	$ 85.33	$ 5,461.12	$ 803.20
ROV Technicians; 24 hours	24	$ 61.73	$ 1,481.52	$ 72.14	$ 1,731.36	$ 249.84
• Demobilization and clean-up of equipment in Alameda, CA and Stoughton, MA						
Project Manager; 1 days	10	$ 78.13	$ 781.30	$ 85.00	$ 850.00	$ 68.70
Project Engineer; 1 days	10	$ 59.38	$ 593.80	$ 65.63	$ 656.30	$ 62.50
Dive Supervisor; 16 hours	16	$ 77.94	$ 1,247.04	$ 91.38	$ 1,462.08	$ 215.04
Dive Team Foreman; 24 hours	24	$ 61.73	$ 1,481.52	$ 72.14	$ 1,731.36	$ 249.84
ROV Technicians; 24 hours	24	$ 61.73	$ 1,481.52	$ 72.14	$ 1,731.36	$ 249.84
• Submittal of final deliverables						
Project Manager; 2 weeks	100	$ 78.13	$ 7,813.00	$ 85.00	$ 8,500.00	$ 687.00
Project Engineer; 2 weeks	100	$ 59.38	$ 5,938.00	$ 65.63	$ 6,563.00	$ 625.00
ROV Technicians; 2 weeks	80	$ 61.73	$ 4,938.40	$ 72.14	$ 5,771.20	$ 832.80
SUBTOTAL			**$ 39,667.84**		**$ 45,023.82**	**$ 5,355.98**
TOTAL			**$ 95,697.04**		**$ 109,623.18**	**$ 13,926.14**

** TOTAL PAGE.06 **

ATTACHMENT 1

OCEAN OUTFALL REMOTE OPERATED VEHICLE INSPECTION - 722.868252

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of September, 2006, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and J.F. WHITE CONTRACTING COMPANY, hereinafter designated as "CONSULTANT".

RECITALS

A. CITY desires to obtain professional services from an independent contractor for the above named project.

B. CONSULTANT has submitted a proposal to provide services for the CITY in accordance with the terms set forth in this Agreement.

C. CITY desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to CITY as an independent contractor.

D. CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education and expertise.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1.0 **SCOPE OF WORK.** The CONSULTANT will perform an Ocean Outfall Remote Operated Vehicle Inspection, as described in the CONSULTANT'S proposal delivered on July 12, 2006 per the request for proposal requirements, and attached hereto as Exhibit A.

1.1 **PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.** The professional services to be performed by CONSULTANT shall consist of but not be limited to the following:

1.1.1 Work closely with the Water Utilities Director in performing work in accordance with this Agreement in order to receive clarification as to the result which the CITY expects to be accomplished by CONSULTANT. The Water Utilities

Director, under the authority of the City Manager, shall be the CITY'S authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The Water Utilities Director may delegate authority in connection with this Agreement to the Water Utilities Director's designees. For the purposes of directing the CONSULTANT'S performance in accordance with this Agreement, the Water Utilities Director delegates authority to Greg Blakely.

1.1.2 In compliance with Government Code section 7550, the CONSULTANT shall include a separate section in the proposal prepared pursuant to this Agreement, which contains a list of all the subcontractors and dollar amounts of all contracts and subcontracts required for the preparation of work described in this Agreement.

1.1.3 Visit and carefully examine the location of the project as often as necessary to become acquainted with all conditions which are visible or could reasonably be discovered, and which might have an impact upon the construction of the project.

a. Prepare needed reports and notices.

b. Attend meetings with the Water Utilities Director or his designees.

1.2 **SERVICES PROVIDED BY CITY.** The CITY shall perform the following services:

1.2.1 Provide access to all public improvement plans and records and furnish one copy of drawings and reports requested.

1.2.2 Obtain all necessary permits from other regulatory agencies and other Departments. CONSULTANT shall participate in the completion of such forms but CITY will submit these and pay for any applicable fees.

1.2.3 Upon request, verify the location of existing CITY owned utilities.

1.2.4 Provide all legal advertising mailings and postings required.

1.2.5 Provide overall project management.

2.0 TIMING REQUIREMENTS

2.1 Time is of the essence in the performance of work under this Agreement and the following timing requirements shall be strictly adhered to unless otherwise modified in writing as set forth in Section 2.4. Failure by CONSULTANT to strictly adhere to these timing requirements may result in termination of this Agreement by the CITY and the assessment of damages against the CONSULTANT for delays.

2.2 CONSULTANT shall perform Ocean Outfall Remote Operated Vehicle Inspection within 75 calendar days of the execution of this Agreement.

2.3 CONSULTANT shall prepare and deliver a copy of the final report of the inspection to the Water Utilities Department within 45 calendar days of the execution of this inspection.

2.4 CONSULTANT shall submit all requests for extensions of time for performance in writing to the Water Utilities Director no later than ten (10) calendar days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. The Water Utilities Director shall review all such requests and may grant reasonable time extensions for unforeseeable delays which are beyond CONSULTANT'S control.

2.5 For all time periods not specifically set forth herein, the CONSULTANT shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, fax, hand delivery or mail.

3.0 **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 Water Utilities Director. 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 Water Utilities Director. 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.

4.0 **CITY BUSINESS LICENSE.** Prior to the commencement of any work under this agreement, the CONSULTANT shall obtain and present a copy of an Oceanside City Business License to the Water Utilities Director.

5.0 **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 these Award Documents. The certification shall be in accordance with Subsections 7.3 through 7.8 of this Agreement.

6.0 **LIABILITY INSURANCE.**

6.1 CONSULTANT shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial 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.

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

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

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

6.2.2 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.

6.3 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 an additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

6.4 All insurance companies affording coverage to the CONSULTANT pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

6.5 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.

6.6 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.

6.7 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.

6.8 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.

7.0 **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims or lawsuits for damages to persons or property arising out of the conduct, negligent acts, errors, omissions or wrongful acts of 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, expert fees, attorneys' fees and liability assessed against or incurred by the CITY, its officers, agents or employees in defending against such claims or lawsuits, whether 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 resulting or arising from the 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.

8.0 **NO CONFLICT OF INTEREST.** The CONSULTANT shall not be financially interested in any other CITY contract for this project. For the limited purposes of interpreting this section, the CONSULTANT shall be deemed a "City officer or employee", and this Section shall be interpreted in accordance with Government Code section 1090. In the event that the CONSULTANT becomes financially interested in any other CITY contract for this project, that other contract shall be void. The CONSULTANT shall indemnify and hold harmless the CITY, under Section 7 above, for any claims for damages resulting from the CONSULTANT'S violation of this Section.

9.0 **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and other documents, prepared or provided by the CONSULTANT under this Agreement shall be the property of the CITY. The CITY agrees to hold the CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the plans and specifications and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computation and other documents, prepared or provided by the CONSULTANT. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting their participation in this project.

10.0 **COMPENSATION.**

10.1 For work performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT in accordance with the schedule of billing rates set forth in Exhibit "A", attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this Agreement without prior written approval of the Water Utilities Director. CONSULTANT'S compensation for all work performed in accordance with this Agreement shall not exceed the total contract price of $248,300.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the Water Utilities Director. CONSULTANT shall obtain approval by the Water Utilities Director prior to performing any work which results in incidental expenses to CITY as set forth in Section 10.2.2.

10.2 CONSULTANT shall maintain accounting records including the following information:

10.2.1 Names and titles of employees or agents, types of work performed and times and dates of all work performed in connection with this Agreement which is billed on an hourly basis.

10.2.2 All incidental expenses including reproductions, computer printing, postage, mileage and subsistence.

10.3 CONSULTANT'S accounting records shall be made available to the Water Utilities Director for verification of billings, within a reasonable time of the Water Utilities Director's request for inspection.

10.4 CONSULTANT shall submit monthly invoices to CITY. CITY shall make partial payments to CONSULTANT not to exceed the total contract price within thirty (30) days of receipt of invoice, subject to the approval of the Water Utilities Director, and based upon the following partial payment schedule:

10.4.1 Upon completion of the remote operated vehicle inspection, partial payments shall not exceed $ 223,470.

10.4.2 Final payment shall be made to CONSULTANT upon CONSULTANT's submission of the final reports to the satisfaction of the Water Utilities Director.

11.0 **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement, in accordance with Section 13. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

12.0 **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT'S duties be delegated, without the express written consent of the CITY. Any attempt to assign or delegate this Agreement without the express written consent of the CITY shall be void and of no force or effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

13.0 **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.

14.0 **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.

15.0 **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.

16.0 **DISPUTE RESOLUTION.**

a. Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be first submitted to mediation, the cost of which shall be borne equally by the parties.

b. No suit shall be brought on this contract unless all statutory claims filing requirements have been met.

17. **NOTICES.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

TO CITY:	**TO CONSULTANT:**
Lonnie Thibodeaux Interim Water Utilities Director 300 North Coast Highway Oceanside, CA 92054	James F. Clark J.F. White contracting Company 10 Burr Street Framingham, MA 01701

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or

b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

18.0 **SIGNATURES.** The individuals executing this Agreement represent and warrant 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:

J.F. WHITE CONTRACTING COMPANY

By: James F. Clark

Name/Title Vice President
corporation

By: James F. Clark

Name/Title Vice President

04-1967105

Employer ID No.

CITY OF OCEANSIDE

By:

Barry E. Martin, Interim City Manager

APPROVED AS TO FORM:

Barbara Hamilton, ASST.

City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

On this 31st day of July, 2006, before me, the undersigned notary public, personally appeared James Clark, proved to me through satisfactory evidence of identification, which were knowledge, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Lecia C. Shronce

LECIA C. SHRONCE, Notary Public
My Commission Expires February 11, 2011

LECIA C. SHRONCE
MY COMMISSION EXPIRES FEB. 11, 2011
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS

(Revised 3-2005)