

STAFF REPORT



ITEM NO. 9

CITY OF OCEANSIDE

DATE: October 21, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENTS WITH GEOPACIFICA, INC., AND RIGHT OF WAY ENGINEERING SERVICES, INC., FOR GEOTECHNICAL AND CONSTRUCTION SURVEY SERVICES FOR THE SAN LUIS REY RIVER TRAIL EXTENSION PROJECT PHASE 2**

SYNOPSIS

Staff recommends that the City Council approve a professional services agreement with GeoPacifica, Inc., of Oceanside, in an amount not to exceed \$6,760 for geotechnical testing and observation; and approve a professional services agreement with Right of Way Engineering Services, Inc., of Oceanside in an amount not to exceed \$22,620 for construction survey services for the San Luis Rey River Trail Extension Project Phase 2; and authorize the City Manager to execute the agreements.

BACKGROUND

The San Luis Rey River (SLRR) and its watershed are the largest in San Diego County, support critical habitat for three endangered species, and provide the opportunity for compatible recreation along a scenic Class 1 Bikeway, the San Luis Rey River Trail (SLRRT). The SLRRT borders the southern side of the SLRR beginning at the intersection of Neptune and Cleveland Streets and continues approximately 7 miles east to College Boulevard. A Class 1 Bikeway is defined as off-street facilities with exclusive rights-of-way, designated for the exclusive use of bicyclists and pedestrians.

Phase 1 of the SLRRT Extension Project was for the repaving of the sewer easement and fence installation from College Boulevard to the first City-owned easement at Andrew Jackson Street (Segment 1). The project was completed in September of 2008.

On July 1, 2009, the City Council approved the plans and specifications and authorized the City Engineer to call for bids for the San Luis Rey River Trail Project Phase 2 (Segment 3).

On September 9, 2009, the City Council awarded a construction contract to Charles Doherty Concrete of Oceanside.

ANALYSIS

Phase 2 (Segment 3) of the SLRRT Extension Project is for the paving of the sewer easement access road from Tyler Street to North Santa Fe which is approximately 0.9 miles. A more detailed project description includes rough and precise grading, asphalt paving of a 10-foot-wide path, centerline and edge-striping and bicycle-appropriate signage. The project also includes repair and replacement of 4 storm drain crossings as well as fencing and landscape treatments that will be placed along the City sewer easement and access points.

In order to ensure compliance with plans and specifications, geotechnical testing and observation, as well as construction survey services are required. An RFP was issued for construction staking services and Right of Way Engineering Services, Inc., was determined the lowest responsible bidder (see Exhibit A). GeoPacifica, Inc., was selected to provide Geotechnical testing and observation services.

In order to effectively increase staff efficiencies and outputs, the Engineering Division developed an on-call services program with consultant firms of varying technical backgrounds. The on-call services program is a pool of prequalified consultants within respective disciplines that are available to perform services on a rotational basis with a not to exceed limit of \$25,000 for one specific project.

Pursuant to the Procurement of Goods and Services Directive and the "Multiple awards to the same vendor/contractor/consultant" clause requires City departments to track expenditures to consultants on a "cumulative effect". When multiple awards are made to a single contractor, the directive requires the cumulative effect be tracked. The total dollar value of the entire cumulative amount will determine what level of approval is necessary.

As part of the Engineering Division's on-call program, GeoPacifica, Inc., was chosen to provide geotechnical services in an amount not to exceed \$6,760. The proposed agreement with GeoPacifica, Inc., coupled with their 2-year standing services contract has exceeded their cumulative amount of \$50,000. The Department's cumulative total for GeoPacifica, Inc., exceeds \$50,000 and requires City Council approval of the professional services agreement.

Due to the size and length of the SLRRT Extension project, staff estimated that the construction surveying would exceed the \$25,000 limit of the on-call services program. Staff prepared an RFP in which 3 firms from the on-call services program were solicited to submit proposals for construction surveying services. Right of Way Engineering Services, Inc., was the lowest responsible bidder with an amount not to exceed \$22,620. The proposed agreement with Right of Way Engineering, Inc., coupled with other expenditures during the last fiscal year, has also exceeded their cumulative amount of \$50,000 and requires City Council approval of the professional services agreement.

FISCAL IMPACT

The Mission Resource River Parkway grant fund from the State Resources Agency provided a total of \$558,060 for Phases 1 and 2 of the SLRRT Extension Project. The Mission Resource River Parkway grant fund (904718700272.5325) has \$303,766 available for Phase 2 construction. In addition, \$300,000 has been budgeted from TransNet (906560300598.5325), providing a total of \$603,766 available for construction. The construction contract of \$373,897.50 with Charles Doherty Concrete, plus 15 percent contingency, construction support costs and project overhead will result in a total construction project cost of \$479,938.02. Construction support costs allowed for a budget of \$35,000. Therefore, sufficient funds are available for this project.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

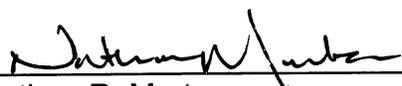
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

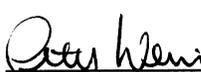
Staff recommends that the City Council approve a professional services agreement with GeoPacifica, Inc., of Oceanside, in an amount not to exceed \$6,760 for geotechnical testing and observation; and approve a professional services agreement with Right of Way Engineering Services, Inc., of Oceanside in an amount not to exceed \$22,620 for construction survey services for the San Luis Rey River Trail Extension Project Phase 2; and authorize the City Manager to execute the agreements.

PREPARED BY:



Nathan R. Mertz
CIP Manager I
Parks Development Manager

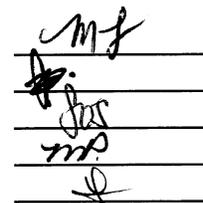
SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

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



Attachments:

Professional Services Agreement for GeoPacifica, Inc., and Right of Way Engineering Exhibit A

**San Luis Rey River Trail Extension Project Phase 2 Geotechnical Services
906560300598
598.845603**

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, dated _____, 2009 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and GeoPacifica, Inc., hereinafter designated as "CONSULTANT".

RECITALS

- A. CITY desires to obtain professional engineering services from an independent contractor for the above named project.
- B. CONSULTANT has submitted a proposal to provide engineering 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 project is more particularly described as follows: Provide Geotechnical and Soil Testing and Observation Services for the San Luis Rey River Trail Extension Project Phase 2, as detailed in Exhibit "A", Scope of Services.
- 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 City Engineer 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 City Engineer, under the authority of

San Luis Rey River Trail Extension Project Phase 2 Geotechnical Services
906560300598
598.845603

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 City Engineer may delegate authority in connection with this Agreement to the City Engineer's designees. For the purposes of directing the CONSULTANT'S performance in accordance with this Agreement, the City Engineer delegates authority to Nathan Mertz, Parks Development Manager.

- 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.
- 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.
- 2.0 **TIMING REQUIREMENTS.** This Agreement shall take effect on the date approved by the City Engineer and be valid until the execution of the Notice of Completion.
- 3.0 **DESIGN CRITERIA AND STANDARDS.** All work shall be performed in accordance with applicable CITY, state and federal codes and criteria. In the performance of its professional services, CONSULTANT shall use the degree of care and skill ordinarily exercised by consultants under similar conditions.
- 4.0 **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 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 sole responsible for the performance

San Luis Rey River Trail Extension Project Phase 2 Geotechnical Services
906560300598
598.845603

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.

5.0 **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 City Engineer.

6.0 **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.

7.0 **LIABILITY INSURANCE.**

7.1 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.

7.2.1 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)

San Luis Rey River Trail Extension Project Phase 2 Geotechnical Services
906560300598
598.845603

General limit per occurrence	\$ 1,000,000
General limit project specific	\$ 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.

- 7.2.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.

San Luis Rey River Trail Extension Project Phase 2 Geotechnical Services
906560300598
598.845603

- 7.7 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.
- 7.8 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.
- 8.0 **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).

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

- 9.0 **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 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.

San Luis Rey River Trail Extension Project Phase 2 Geotechnical Services
906560300598
598.845603

- 10.0 **ERRORS AND OMISSIONS.** In the event that the City Engineer determines that the CONSULTANT'S negligence, misconduct, errors or omissions in the performance of work under this Agreement has resulted in expense to CITY greater than would have resulted if there were no such negligence, errors or omissions in the plans or contract specifications, CONSULTANT shall reimburse CITY for the additional expenses incurred by the CITY, including engineering, construction and/or restoration expense. Nothing herein is intended to limit CITY'S rights under Sections 7, 8 or 9.
- 11.0 **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 9 above, for any claims for damages resulting from the CONSULTANT'S violation of this Section.
- 12.0 **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.

San Luis Rey River Trail Extension Project Phase 2 Geotechnical Services
906560300598
598.845603

13.0 **COMPENSATION.**

13.1 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 City Engineer. CONSULTANT'S compensation for all work performed in accordance with this Agreement shall not exceed the total contract price of \$6,760.00.

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 as set forth in Section 13.2.2.

13.2 CONSULTANT shall maintain accounting records including the following information:

13.2.1 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.

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

13.3 CONSULTANT'S accounting records shall be made available to the City Engineer for verification of billings, within a reasonable time of the City Engineer's request for inspection.

13.4 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 City engineer, and based upon the following partial payment schedule:

14.0 **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

San Luis Rey River Trail Extension Project Phase 2 Geotechnical Services
906560300598
598.845603

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.

- 15.0 **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.

- 16.0 **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.

- 17.0 **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.

- 18.0 **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.

San Luis Rey River Trail Extension Project Phase 2 Geotechnical Services
906560300598
598.845603

19.0 **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.

20. **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:

City of Oceanside
City Engineer
300 North Coast Highway
Oceanside, CA 92054

TO CONSULTANT:

GeoPacifica, Inc.
3060 Industry Street, Suite 105
Oceanside, CA 92054

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.

San Luis Rey River Trail Extension Project Phase 2 Geotechnical Services
906560300598
598.845603

21.0 **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 on the dates indicated below:

GEOPACIFICA, INC.
By: *James F. Knowlton - President*
Name/Title
James F. Knowlton
Date: 9/2/09

CITY OF OCEANSIDE
By: _____
City Engineer
Date: _____

By: _____
Name/Title
Date: _____

APPROVED AS TO FORM:
Pauline Samuel Co. ASST.
City Attorney

Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

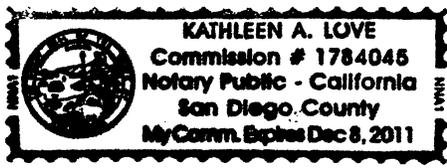
On 9/2/09 before me, Kathleen A. Love, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared James F. Knowlton
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.
 Signature Kathleen A. Love
Signature of Notary Public



Place Notary Seal Above

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: Professional Service Agreement - Geotechnical

Document Date: 9/2/09 Number of Pages: 13

Signer(s) Other Than Named Above: _____

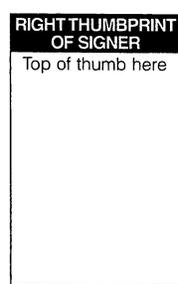
Capacity(ies) Claimed by Signer(s)

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____



Signer Is Representing: _____

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____



Signer Is Representing: _____

EXHIBIT "A"

GROPACIFICA, INC.
3060 Industry Street, Suite 105
Oceanside, CA 92054

August 24, 2009

Mr. Nathan Mertz
City of Oceanside
300 North Coast Highway
Oceanside, California 92054

Subject: Fee Estimate to Provide Geotechnical And
Soil Testing and Observation Services For
San Luis Rey River Trail Extension
Oceanside, California

Reference Reports:

1. Geotechnical Investigation, San Luis Rey River Trail Extension, Oceanside, California; by Geocon Incorporated, dated May 18, 2007
2. Project Plans, San Luis Rey River Trail Extension, Oceanside, California; by Buccola Engineering, dated 5/26/09, 22 sheets.

INTRODUCTION

In conformance with your request, we are pleased to submit this fee estimate to provide geotechnical and material testing and observation services for the subject project.

GEOPACIFICA, INC.

Page 2
San Luis Rey River Trail Extension
August 24, 2009

SUMMARY OF SERVICES

Our service relative to soils will cover all aspects of soil and geotechnical services. Based on the work schedule, earthwork is scheduled to begin in September, 2009, and continue for approximately 90 days. There appears will be intermittent need for geotechnical and soil testing and observation service for approximately 35 days out of the 90 day construction schedule. There will be about 80 hours of inspection and testing service required and approximately 8 hours of supervision/professional staff time required.

Based on the site study (reference 1), the report suggests removal depth of 2 feet underneath the trail width(14-feet). There is also cut and fill operations along with imported soil.

If the soils at the base of the excavation are deemed to be unsuitable, a geo-fabric material may need to be placed at the base of the excavation. The placement, location, depth, and the type of geo-fabric will be determined in the field during construction.

The soils report and plans provides for only 6 inches of aggregate base under 4-inches of asphalt paving. This recommendation will need to be verified in the field with evaluation of the actual finish grade soils.

GEOPACIFICA, INC.

Page 3
San Luis Rey River Trail Extension
August 24, 2009

ESTIMATED FEES

The following breakdown of fees based on the above outline is provided below:

Soil/Materials Technician – part time	80 hours @ \$65/hr	5,200.00
Laboratory Testing – Maximum Density(3)		360.00
Nuclear Density Gauge	80hours @ \$5/hr	400.00
Field Supervision - Senior Engineer /Geologist	8hrs@ \$100/hr	800.00

The total fee estimate to perform service will be a not to exceed cost of \$6760.00.

We can mobilize for this service within 24 hours after receiving authorization to proceed. We can begin service with your verbal authorization, but will require a purchase order/contract for our office and accounting department.

Should your have any questions, please do not hesitate to contact us.

Respectfully,

James F. Knowlton
President
RCE 55754/CEG 1045

San Luis Rey River Trail Extension Project Phase 2 Construction Staking Services
906560300598
598.845603

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, dated _____, 2009 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Right-Of-Way Engineering Services, Inc., hereinafter designated as "CONSULTANT".

RECITALS

- A. CITY desires to obtain professional engineering services from an independent contractor for the above named project.
- B. CONSULTANT has submitted a proposal to provide engineering 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 project is more particularly described as follows:
Provide construction staking for the San Luis Rey River Trail Extension Project Phase 2, as detailed in Exhibit "A", Scope of Services.
- 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 City Engineer 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 City Engineer, under the authority of the City Manager, shall be the CITY'S authorized representative in the

San Luis Rey River Trail Extension Project Phase 2 Construction Staking Services
906560300598
598.845603

interpretation and enforcement of all work performed in connection with this Agreement. The City Engineer may delegate authority in connection with this Agreement to the City Engineer's designees. For the purposes of directing the CONSULTANT'S performance in accordance with this Agreement, the City Engineer delegates authority to Nathan Mertz, Parks Development Manager.

- 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.
- 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.
- 2.0 **TIMING REQUIREMENTS.** This Agreement shall take effect on the date approved by the City Engineer and be valid until the execution of the Notice of Completion.
- 3.0 **DESIGN CRITERIA AND STANDARDS.** All work shall be performed in accordance with applicable CITY, state and federal codes and criteria. In the performance of its professional services, CONSULTANT shall use the degree of care and skill ordinarily exercised by consultants under similar conditions.
- 4.0 **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 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 sole responsible for the performance of any of its employees, agents or subcontractors under this agreement.

San Luis Rey River Trail Extension Project Phase 2 Construction Staking Services
906560300598
598.845603

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.

5.0 **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 City Engineer.

6.0 **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.

7.0 **LIABILITY INSURANCE.**

7.1 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.

7.2.1 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
------------------------------	--------------

San Luis Rey River Trail Extension Project Phase 2 Construction Staking Services
906560300598
598.845603

General limit project specific	\$ 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.

- 7.2.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.

San Luis Rey River Trail Extension Project Phase 2 Construction Staking Services
906560300598
598.845603

- 7.7 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.
- 7.8 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.
- 8.0 **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).

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

- 9.0 **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 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.

San Luis Rey River Trail Extension Project Phase 2 Construction Staking Services
906560300598
598.845603

- 10.0 **ERRORS AND OMISSIONS.** In the event that the City Engineer determines that the CONSULTANT'S negligence, misconduct, errors or omissions in the performance of work under this Agreement has resulted in expense to CITY greater than would have resulted if there were no such negligence, errors or omissions in the plans or contract specifications, CONSULTANT shall reimburse CITY for the additional expenses incurred by the CITY, including engineering, construction and/or restoration expense. Nothing herein is intended to limit CITY'S rights under Sections 7, 8 or 9.
- 11.0 **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 9 above, for any claims for damages resulting from the CONSULTANT'S violation of this Section.
- 12.0 **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.
- 13.0 **COMPENSATION.**
- 13.1 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 City Engineer. CONSULTANT'S compensation for all work performed in accordance with this Agreement shall not exceed the total contract price of \$22,620.00.

San Luis Rey River Trail Extension Project Phase 2 Construction Staking Services
906560300598
598.845603

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 as set forth in Section 13.2.2.

13.2 CONSULTANT shall maintain accounting records including the following information:

13.2.1 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.

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

13.3 CONSULTANT'S accounting records shall be made available to the City Engineer for verification of billings, within a reasonable time of the City Engineer's request for inspection.

13.4 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 City engineer, and based upon the following partial payment schedule:

14.0 **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.

15.0 **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

San Luis Rey River Trail Extension Project Phase 2 Construction Staking Services
906560300598
598.845603

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.

16.0 **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.

17.0 **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.

18.0 **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.

19.0 **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.

San Luis Rey River Trail Extension Project Phase 2 Construction Staking Services
906560300598
598.845603

20. **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:

City of Oceanside
City Engineer
300 North Coast Highway
Oceanside, CA 92054

TO CONSULTANT:

Right-Of-Way Engineering Services Inc.
4167 Avenida de la Plata, Suite 114
Oceanside, CA 92056

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.

San Luis Rey River Trail Extension Project Phase 2 Construction Staking Services
906560300598
598.845603

21.0 **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 on the dates indicated below:

Right-of-Way Engineering Services, Inc.

CITY OF OCEANSIDE

By: 
Michael L. Schlumpberger, President

By: _____
Scott O. Smith, City Engineer

Date: September 15, 2009

Date: _____

By: _____
Name/Title

APPROVED AS TO FORM:

Date: _____


City Attorney

33-0290056
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO

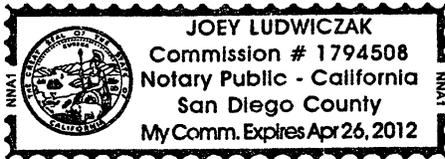
On SEPT 15, 2009 before me, JOEY LUDWICZAK, Notary Public

personally appeared MICHAEL L. SCHLUMBERGER

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 Above

Signature _____
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: _____

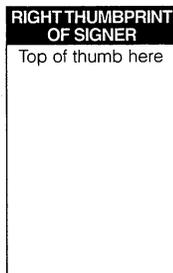
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

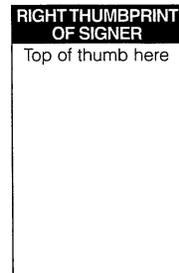
Signer Is Representing: _____



Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

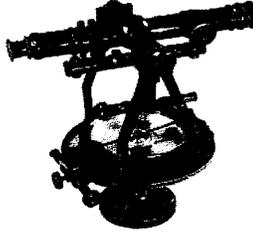
Signer Is Representing: _____



L A H I D I 1 A

Right-Of-Way Engineering Services, Inc.

Land Surveying



September 10, 2009

Mr. Nathan Mertz,
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

Subject: Construction staking for San Luis Rey River Trail Extension project Phase II.

Dear Nathan,

Per your request, I have prepared a scope of work and related fees to complete the construction staking services required.

Scope of work

Task	Hours	Cost
1. Recover project control and establish construction staking control	4.0	\$680.00
2. Final grade stakes for new trail at 25' intervals along all curves 50' intervals along tangent section, all grade breaks, and alignment changes One set of stakes will be set on either edge of the trail with offsets and grade to the proposed slope daylight. Grades to Finish surface of trail will also be shown. Final grade stakes along the centerline of trail at 25' intervals along all curves 50' intervals along tangent section, all grade breaks, and alignment changes.	40.0	\$6,800.00
3. Staking for new storm drain crossings, headwalls and inlet aprons and rip-rap limits	12.0	\$2,040.00
4. Staking for new fencing, gates, signs and striping	16.0	\$2,720.00
5. Staking to adjust sewer manholes to plan finish grade	12.0	\$2,040.00
6. Staking set up and grade sheets	24.0	\$2,160.00
7. Re-stake allowance based on 15% of base staking costs – Actual re-stake to be performed on a time and materials basis.	10.0	\$1,700.00
8. Rough grade certification, field shots on rough grade to as-built slopes trail pad, hinge points and other key locations provided as a plot to overlay the design drawing with out lying elevations noted. Required certification document to comply with City standards.	24.0	\$4,080.00
9. Supervision and coordination	4.0	\$400.00
Total (time and materials) not to exceed		\$22,620.00

ROW's surveyors are members of the International Union of Operating Engineers local 12 and are paid at prevailing wage rates.

Right-of-Way Engineering Services, Inc. Is familiar with the City's professional service agreement and maintains general liability, automobile liability and professional errors and omissions insurance greater than or equal to the required coverage amount and is willing to sign the agreement.

Thank you for the opportunity to propose on this project.

Sincerely,
Right-of-Way Engineering Services, Inc.

Michael L. Schlumpberger, PLS
President

Right-Of-Way Engineering Services, Inc.
Land Surveying

RESOLUTIONS ADOPTED BY UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS OF
RIGHT-OF-WAY ENGINEERING SERVICES, INC.
A California corporation

THE undersigned, being all the directors of RIGHT-OF-WAY ENGINEERING SERVICES, INC., A California Corporation, by this writing approve the following resolutions and consent to their adoption:

WHEREAS, the Board of Directors of this Corporation, desires to grant to the Officers of this Corporation, the power to execute all corporate instruments and documents, or to sign the corporate name without limitation, each acting alone and without approval of signature of any other corporate Officer.

NOW, THEREFORE, BE IT RESOLVED, that MICHAEL L. SCHLUMPBERGER is hereby authorized and directed to act alone in signing any and all corporate documents of any kind or nature, and/or related instruments, for the benefit of the Corporation, on such terms and conditions as MICHAEL L. SCHLUMPBERGER, in his sole discretion, deems advisable in the best interest of the corporation.

This consent is executed pursuant to subdivision (b) of Section 307 of the California Corporations Code, and is to be filed with the Minutes of Board proceedings.

Executed effective January 31, 2003.


Michael L. Schlumpberger
President


Michael L. Schlumpberger
Secretary