

# STAFF REPORT



ITEM NO. 14  
CITY OF OCEANSIDE

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DATE: October 8, 2008

TO: Honorable Mayor and City Council Members

FROM: Water Utilities Department

SUBJECT: **AUTHORIZATION TO AWARD A CONTRACT IN THE AMOUNT OF \$1,347,507 TO BRH-GARVER WEST, INC. OF SAN DIEGO FOR THE CONSTRUCTION OF THE MESA-GARRISON SEWER FORCE MAIN PROJECT AND APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH J.T. KRUER & COMPANY IN THE AMOUNT OF \$169,465 FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES DURING CONSTRUCTION**

## SYNOPSIS

Staff and the Water Utilities Commission recommend that the City Council authorize the award of a contract in the amount of \$1,347,507 to BRH-Garver West, Inc., of San Diego for the construction of the Mesa-Garrison Sewer Force Main; authorize the City Manager to execute the agreement upon receipt of all supporting documents; approve a professional services agreement with J.T. Krueer & Company of Oceanside in the amount of \$169,465 for construction management and inspection services during construction; and authorize the City Manager to execute the agreement.

## BACKGROUND

Sewage flows from Mesa Drive and Oceanside Boulevard east of El Camino Real combine with flows from the Buena Vista Lift Station (BVLS) to form what is called the Mesa/Garrison Area Sewer System in the Wastewater Master Plan. The 24-inch gravity sewer main that handles the flows is above capacity during wet-weather flows and experiences chronic surcharging in a shallow manhole at the Mesa/Garrison intersection.

One method of eliminating the surcharging of the 24-inch gravity sewer main was to remove the BVLS flow. Tetra Tech, Inc., of Oceanside designed a new force main that connects the Buena Vista Force Main (BVFM) in the El Camino Real/Oceanside Boulevard intersection to a 42-inch fiberglass reinforced pipe (Hobas pipe) in the Mesa Drive/Garrison Street intersection (Exhibit A). When the new force main is constructed the BVLS flow will be diverted from the 24-inch gravity sewer to the 42-inch Hobas pipe, which will eliminate the surcharging in the shallow manhole at the Mesa/Garrison intersection.

The project consists of installing approximately 2,632 linear feet of force main via the conventional open-trench method of construction and installing 44 linear feet of force main inside a 48-inch steel sleeve by the bore-and-jack method of construction under two 72-inch storm drain pipes just south of Mesa Drive in El Camino Real. The connections to the BVFM in the Oceanside Boulevard/El Camino Real intersection and to the 42-inch Hobas pipe in the Mesa/Garrison intersection will also be constructed.

On June 18, 2008, the City Council approved the plans and specification for the construction of the Mesa-Garrison Sewer Force Main project; and authorized the City Engineer to call for bids.

## **ANALYSIS**

On July 29, 2008, nine bids were received and opened for the Mesa-Garrison Sewer Force Main project (Exhibit B). The apparent low bidder is BRH-Garver West, Inc., of San Diego with a bid of \$1,347,507. Staff has reviewed the bid submitted by BRH-Garver West, Inc., and finds that the bid bond and references are in accordance with City standards. The engineer's estimate to construct the project was \$1,456,070.

To properly manage this project during construction, the services of a professional construction management and inspection support team are required. On June 23, 2008, staff solicited proposals from thirteen engineering firms (Exhibit C) to provide construction management and inspection services during construction of this project. The firms were selected from a list compiled by the City of Oceanside's Engineering Division using the City's selection procedures for professional services. Included in the solicitation were all Oceanside firms that provide these services.

On July 22, 2008, five proposals were received by the Water Utilities Department. In accordance with the City's procedure, a panel consisting of City project managers was selected to evaluate the proposals (Exhibit D). The panel unanimously recommended that J.T. Kruer & Company of Oceanside be selected to provide the construction management and inspection services. The J.T. Kruer & Company team includes Right-of-Way Engineering of Oceanside as a sub-consultant.

J.T. Kruer & Company construction management and inspection duties will be to ensure that the project is constructed according to the plans and specifications, on time and under budget. Additional duties to be performed include day-to-day monitoring and inspection of the work; geotechnical engineering and inspection services; surveying; special inspections as required; preparation of daily, weekly and monthly reports; processing of proposed change orders; processing submittals and requests for information; maintenance of logs for all correspondence, submittals, requests for information and change orders; attending weekly and monthly progress meetings; and generating and submitting detailed as-built construction drawings.

## **FISCAL IMPACT**

The Mesa/Garrison 42-inch Gravity Sewer project (726.865666) has an approximate balance of \$1,580,013. The BRH-Garver West, Inc., bid was \$1,347,507 and J.T. Kruer & Company's proposal is \$169,465 for the construction management and inspection services, which brings the total cost for construction and construction management and inspection to \$1,516,972. Therefore, adequate funds are available for the project.

## **INSURANCE REQUIREMENTS**

The City's standard insurance requirements will be met.

## **CITY ATTORNEY'S ANALYSIS**

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

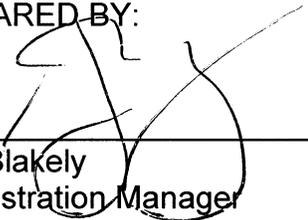
## **COMMISSION OR COMMITTEE REPORT**

The Utilities Commission approved staff's recommendation at its regularly scheduled meeting on September 16, 2008.

**RECOMMENDATIONS**

Staff and the Water Utilities Commission recommend that the City Council authorize the award of a contract in the amount of \$1,347,507 to BRH-Garver West, Inc., of San Diego for the construction of the Mesa-Garrison Sewer Force Main; authorize the City Manager to execute the agreement upon receipt of all supporting documents; approve a professional services agreement with J.T. Kruer & Company of Oceanside in the amount of \$169,465 for construction management and inspection services during construction; and authorize the City Manager to execute the agreement.

PREPARED BY:

  
\_\_\_\_\_  
Greg Blakely  
Administration Manager

SUBMITTED BY:

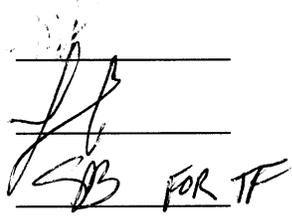
  
\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:

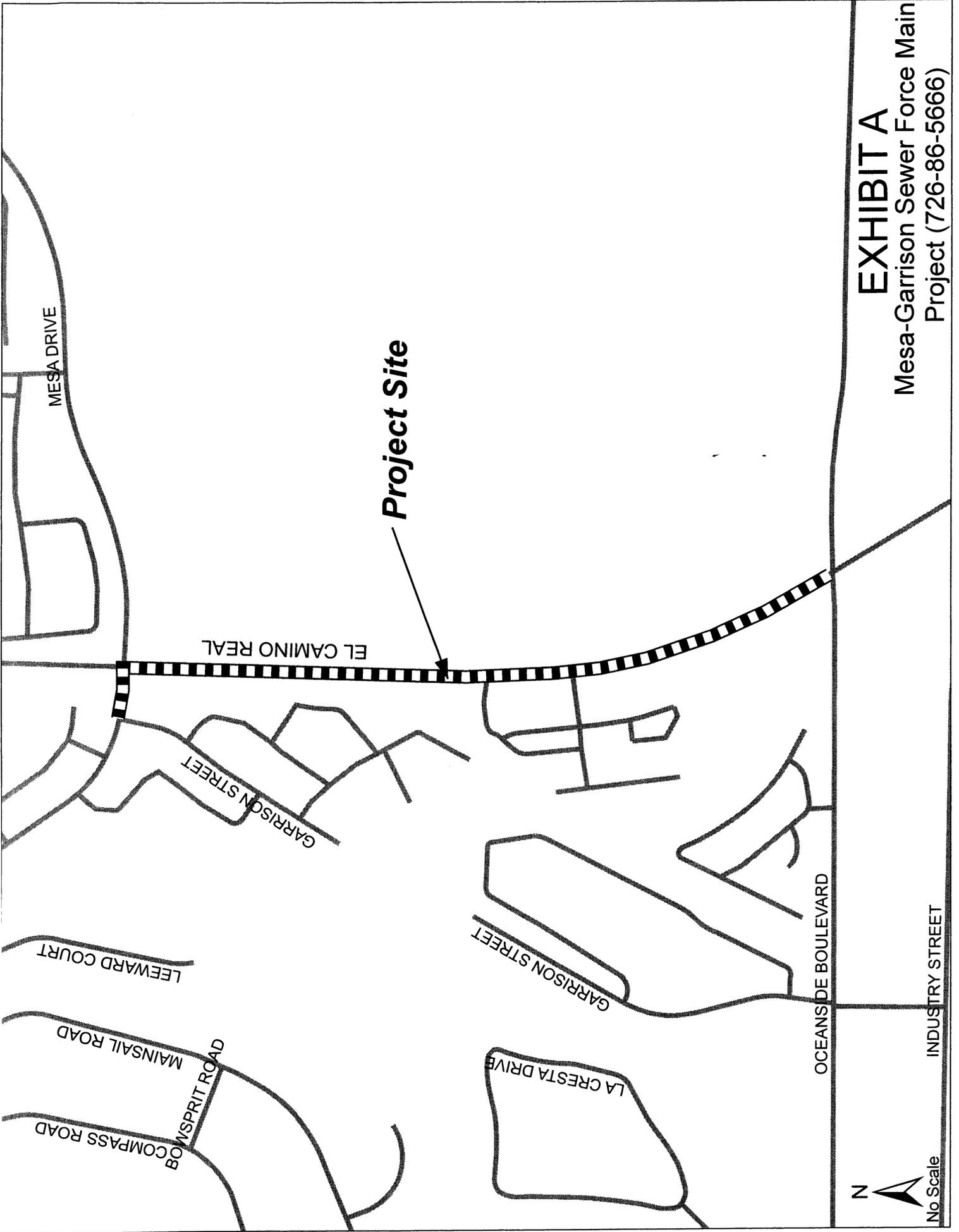
Michelle Skaggs Lawrence, Deputy City Manager

Lonnie Thibodeaux, Water Utilities Director

Teri Ferro, Financial Services Director

  
\_\_\_\_\_  
\_\_\_\_\_  
SB FOR TF

- Exhibit A – Location Map
- Exhibit B – Bid Results
- Exhibit C – Consultant Mailing List
- Exhibit D – Consultant Rating Summary



No Scale

# EXHIBIT A

Mesa-Garrison Sewer Force Main  
Project (726-86-5666)

**BID TABULATION**

PROJECT NO.: 726-86-5666		ENGINEER'S ESTIMATE	
PROJECT NAME: Mesa-Garrison Sewer Force Main			
PROJECT MANAGER: Gary Bodman		\$1,456,070	
BID DATE: July 29, 2008 @ 10:00 AM			
<b>BIDDER:</b>		<b>BID AMOUNT:</b>	
1. Southern CA Pipeline Construction, Inc.	Tustin, CA	PVC	1,895,850 <sup>00</sup>
2. El Cajon Grading & Engineering Co., Inc.	Lakeside, CA	PVC	2,291,789 <sup>00</sup>
3. BRH-Carver West, Inc.	San Diego, CA	PVC	1,347,507 <sup>00</sup>
4. CCL Contracting, Inc.	Escondido, CA	PVC	1,364,834 <sup>00</sup>
5. Zondrios Corporation	San Marcos, CA	PVC	1,757,940 <sup>00</sup>
6. Burtech Pipeline, Inc.	Encinitas, CA	PVC	1,357,884 <sup>00</sup>
7. TC Construction Co., Inc.	Santee, CA	PVC	1,543,094 <sup>00</sup>
8. Cass Construction, Inc.	El Cajon, CA	PVC	1,701,422 <sup>00</sup>
9. Ross A. Guy & Son, Inc.	Fallbrook, CA	PVC	1,456,304 <sup>00</sup>
10.			
11.			
12.			
13.			

Consultant Mailing List for Construction Management and Inspection

Mesa-Garrison Sewer Force Main (726-86-5666)

Company	Address	City	State	Zip	First Name	Last Name	Title	Phone #	Fax
Collo Engineers	4167 Avenida De La Plata, Ste. 114	Oceanside	CA	92056	Bob	Vilker		858-505-1020	
Merstone Engineering, Inc.	620 Mission Avenue	Oceanside	CA	92054	Mike	Boraks		760-722-3495	
Infrastructure Engineering Corp.	717 Pier View Way	Oceanside	CA	92054	Preston H.	Lewis		760-529-0795	
S&J	2303 Nicklaus Drive	Oceanside	CA	92056	Charles A.	Griffin, Jr.		760-753-1492	
Tra Tech, Inc.	2141 El Camino Real, Ste. J	Oceanside	CA	92054	Howard	Arnold		760-754-0550	
Iter 3 Engineering, Inc.	1843 Campesino Place	Oceanside	CA	92056	Don	Bunts		760-737-6195	
yle Engineering Corp.	4167 Avenida De La Plata, Ste. 114	Oceanside	CA	92056	Jeff	Marchioro		858-268-8080	
sons Water & Infrastructure Inc.	110 West A Street, Suite 1050	San Diego	CA	92101	Luke/Richard	Wendel, P.E./Trembath			
S Corporation	1615 Murray Canyon Road, Suite 1000	San Diego	CA	92108	John	Dautel, PE	Sr. Project Manager	619-294-9400	619-243-2977
E-Psomas	5650 El Camino Real, Suite 155	Carlsbad	CA	92008	Daniel G.	Smith		760-433-8710	
ryman & Henigar	11590 W. Bernardo Ct, Suite 100	San Diego	CA	92127	George	Kutchins		858-451-6100	
rrs Services, Inc.	13360 E. Firestone Blvd., Suite A2	Santa Fe Springs	CA	90670	Rubina	Chaudhary	President	562-407-1094	
.Kruer & Company	10251 Vista Sorrento Parkway, Ste. 135	San Diego	CA	92121	Chuck	Knight	V.P. & Const. Mgr.	858-550-0044	858-550-0404

**CONSULTANT PROPOSAL - RATING FORM**

NAME OF FIRM: A) Tetra Tech; B) IEC; C) Boyle; D) JTK; E) PBS&J

Date 7/31/2008

PROJECT: Mesa-Garrison Sewer Force Main--Construction Management & Inspection

Project No. 726-86-5666

ITEM	POINTS	CONSULTANT'S RATING				
		A	B	C	D	E
<b>I. QUALIFICATIONS OF FIRM AND MEMBERS</b>						
A. Specialized expertise of members	15	14	14	14	14	14
B. Adequacy of staff and resources.	15	14	14	13	14	13
<b>II. PERFORMANCE OF WORK SIMILAR IN CHARACTER:</b>						
A. Comparable work (local area preferred).	10	8	10	9	9	9
B. Proposal submitted by Oceanside firm.	6	6	6	6	6	6
C. Proposal included an Oceanside firm as part of a consulting team.	4	4	0	4	4	0
D. Additional points based on abilities, qualifications, and commitment of Oceanside firm.	5	4	5	3	3	3
<b>III. ABILITY TO PROVIDE SERVICES:</b>						
A. Ability to complete job on time.	10	10	9	9	10	10
<b>IV. QUALITY OF PROPOSAL:</b>						
A. Satisfactorily address all objectives.	10	10	8	9	10	9
B. Provide additional amplifying information.	5	2	3	2	5	2
C. Presentation, clarity, neatness.	5	4	5	4	5	4
<b>V. WORK PERFORMANCE FOR THE CITY:</b>						
A. No work in past 12 months.	10			10	10	
B. Work in past 12 months - deductions based on Contract amount.		2	2			4
<b>VI. PRICE:</b>						
A. Overall cost.	10	7	8	8	9	5
<b>TOTALS:</b>	<b>105</b>	<b>85</b>	<b>84</b>	<b>91</b>	<b>99</b>	<b>79</b>

**RANKING:**

- 1 J.T. Kruer & Company
- 2 Boyle Engineering
- 3 Tetra Tech
- 4 Infrastructure Engineering Corporation (IEC)
- 5 PBS&J

**RATED BY:**

- Name/Title: Gary Bodman, Water/Wastewater Project Manager
- Name/Title: Jason Dafforn, Water/Wastewater Project Manager
- Name/Title: \_\_\_\_\_
- Name/Title: \_\_\_\_\_
- Name/Title: \_\_\_\_\_

**MESA-GARRISON SEWER FORCE MAIN  
(726-86-5666)**

**CITY OF OCEANSIDE**

**PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR  
MESA-GARRISON SEWER FORCE MAIN PROJECT (726-86-5666)**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and J.T. KRUER & COMPANY, 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.** CONSULTANT is to provide professional engineering construction management and inspection services during the construction of the MESA-GARRISON SEWER FORCE MAIN project as described in the CONSULTANT's proposal dated July 22, 2008 and Scope of Services with Fee Summary attached hereto as Exhibit A. The project and scope of work is more particularly described as follows:

**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.

**MESA-GARRISON SEWER FORCE MAIN**  
**(726-86-5666)**

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 Gary Bodman, Water/Wastewater Project 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** Provide construction management and inspection services for the City during the construction period upon request by Water Utilities Director to include the services listed below:

- a) Provide consultation and advice to the City during construction of the project and to ensure that the project are constructed per the plans and specifications, and are constructed on time and under budget;
- b) Provide day-to-day monitoring and inspection of work (including all necessary special inspections);
- c) Provide all necessary survey control, geotechnical engineering and inspection, special inspection, and engineering services coordination required during construction;
- d) Preparation of daily reports, project reports, and notices;
- e) Attend meetings with the Water Utilities Director or his designees;
- f) Preparation of construction meeting agendas and meeting minutes;
- g) Receive and process submittals, requests for information (RFI's), and proposed change orders (PCO's);
- h) Maintain submittal, RFI, correspondence, and change order logs;
- i) Review progress payments and prepare recommendation to City staff;
- j) Coordinating with the City's Water Utilities and Public Works Departments;
- k) Maintain a set of As-built drawings and submit them to the City at the end of the project.

**MESA-GARRISON SEWER FORCE MAIN  
(726-86-5666)**

**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. CONSULTANT shall monitor and enforce the provisions of any such permits.

**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** Duplicate all final plans and specifications.

**1.2.6** 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 2.2. 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 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 that are beyond CONSULTANT's control.

**2.3** 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, facsimile, hand delivery, or mail.

**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 CONSULTANT 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 Water Utilities Director. The

**MESA-GARRISON SEWER FORCE MAIN  
(726-86-5666)**

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.

**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 Water Utilities Director.

**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:

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

**MESA-GARRISON SEWER FORCE MAIN  
(726-86-5666)**

\* 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 additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

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

**7.5** All insurance companies affording coverage shall provide thirty (30) day written notice to the City of Oceanside 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, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

**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 whatever 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

**MESA-GARRISON SEWER FORCE MAIN  
(726-86-5666)**

with this Agreement in the minimum amount of One Million Dollars (\$1,000,000.00).

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

**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 the negligent acts, errors, omissions or other 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 only for those claims arising from the sole negligence or sole willful conduct of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, 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.

**10.0 ERRORS AND OMISSIONS.** In the event that the Water Utilities Director determines that the CONSULTANT's negligence, 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,

**MESA-GARRISON SEWER FORCE MAIN  
(726-86-5666)**

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 Water Utilities Director. CONSULTANT's compensation for all work performed in accordance with this Agreement **shall not exceed \$169,465.**

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 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 Water Utilities Director, for verification of billings, within a reasonable time of the Water Utilities Director'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 Water Utilities Director, and based upon the following partial payment schedule:

**13.4.1** Monthly during the course of construction.

**13.4.2** Final payment shall be made to CONSULTANT upon submittal of a copy of CONSULTANT's As-Built Drawings to the satisfaction of the Water Utilities Director.

**14.0 TERMINATION OF AGREEMENT.** Either party may terminate this Agreement upon ten (10) days written notice to the other party.

If any portion of the work is terminated or abandoned by the CITY, then the CITY

**MESA-GARRISON SEWER FORCE MAIN  
(726-86-5666)**

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 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.

**MESA-GARRISON SEWER FORCE MAIN  
(726-86-5666)**

**20.0 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:**

Lonnie Thibodeaux, Director  
City of Oceanside Water Utilities Dept.  
300 N. Coast Highway  
Oceanside, CA 92054

**TO CONSULTANT:**

Jonathan Kruer, Principal  
J.T. Kruer & Company  
P.O. Box 232  
Oceanside, CA 92049

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 of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) 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.

**MESA-GARRISON SEWER FORCE MAIN  
(726-86-5666)**

**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 this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**PROJECT: CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR  
MESA-GARRISON SEWER FORCE MAIN PROJECT (726-86-5666)**

J.T. KRUER & COMPANY

CITY OF OCEANSIDE

BY:   
SIGNATURE

BY: \_\_\_\_\_  
Peter A. Weiss, City Manager

President + CEO  
NAME/TITLE

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
SIGNATURE

  
City Attorney

\_\_\_\_\_  
NAME/TITLE

33-0826363  
FEDERAL EMPLOYER I.D. NO.

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

State of California )  
County of San Diego )

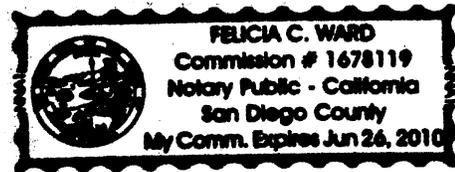
# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On September 10, 2008 before me, Felicia C. Ward, Notary Public,  
(here insert name and title of the officer)

personally appeared Jonathan T. Kruer

personally known to me (or 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.

WITNESS my hand and official seal.



Signature Felicia C. Ward

(Seal)

## OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of \_\_\_\_\_

containing \_\_\_\_\_ pages, and dated \_\_\_\_\_.

The signer(s) capacity or authority is/are as:

- Individual(s)  
 Attorney-in-Fact  
 Corporate Officer(s) \_\_\_\_\_ Title(s) \_\_\_\_\_
- Guardian/Conservator  
 Partner - Limited/General  
 Trustee(s)  
 Other: \_\_\_\_\_

representing: \_\_\_\_\_  
Name(s) of Person(s) or Entity(ies) Signer is Representing

### Additional Information

#### Method of Signer Identification

- Personally known to me  
 Proved to me on the basis of satisfactory evidence:  
     form(s) of identification    credible witness(es)

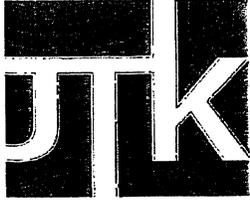
Identification is detailed in notary journal on:

Page # \_\_\_\_\_ Entry # \_\_\_\_\_

Notary contact: \_\_\_\_\_

#### Other

- Additional Signer(s)    Signer(s) Thumbprint(s)  
 \_\_\_\_\_



J.T. KRUER & COMPANY  
Real Estate Development Services

San Diego Office  
10251 Vista Sorrento Parkway, Suite 135 | San Diego, CA 92121  
Phone (858) 550-0044 | Fax (858) 550-0404 | [www.jtkruerco.com](http://www.jtkruerco.com)

P.O. Box 232  
Oceanside, CA 92049

## CITY OF OCEANSIDE

### EXHIBIT "A" - SCOPE OF SERVICES

#### Mesa – Garrison Sewer Force Main Construction Management and Inspection Services

#### PRECONSTRUCTION PHASE SERVICES

##### **Task 1 / Pre – Construction Phase:**

J.T. Krueer & Company will provide the following services during the preconstruction phase of the project.

- **Owner / Contactor Coordination:** Meet with the City of Oceanside and the Contractor to review the basic processes of successfully building the project. Discuss the Contractor's approach to the project, review pertinent community relation issues, establish the mechanics of the submittal process, discuss and define any pre-construction requirements that need to be completed.
- **Coordination with Sub-consultants / Civil Engineer:** Meet with representatives of the geotechnical team, the HDPE "special inspector" and the project surveyor to identify the various tasks that each team member will provide to maintain a safe, productive and cost effective method of building the work. Identify any "early" survey or geotechnical work that will benefit the construction of the project specifically related to documenting the information developed during the pothole process. Include the Civil Engineer in this process regarding the potential need to adjust the pipeline alignment due to unforeseen utility issues.
- **Pre - Construction Summary:** Based on the information developed in the aforementioned pre – construction meetings, provide a detailed summary for the CM/Inspection Staff, Contractor, Civil Engineer and the City of Oceanside describing; working hours, community relation concerns, submittal / RFI processes, change order / billing review and approval processes, permit requirements and the proper protocol for administering the work.
- **Contract Documents and Pre – Construction Meeting:** Assist the City of Oceanside as requested to complete the award process for the project. Schedule and chair the project Pre – Construction meeting including preparing the necessary meeting agenda and minutes.

## **CONSTRUCTION PHASE SERVICES**

### ***Task 2 / Process Request for Information (RFI):***

J.T. Kruer & Company will receive, log, and process all Contractor Requests for Information (RFIs) during the project. J.T. Kruer & Company will review all RFI's and coordinate with the City of Oceanside and the Civil Engineer to develop a prompt and thorough written response for all Contractor RFI's.

### ***Task 3 / Process Submittal - Shop Drawing Review:***

J.T. Kruer & Company will receive, log, and process all Contractor submittals / shop drawings for the project including but not limited to: permits, pipeline materials, appurtenances, traffic control plans and any other required submittals. Prior to forwarding any "technical" submittals to the design engineer, J.T. Kruer & Company will review all submittals for thoroughness and basic conformity to the specifications. The submittal responses will be stored electronically in a PDF format. A submittal log will be kept to track the status of all submittals including the date received, the date forwarded for additional technical review, and the date returned to the Contractor including a log of the "Action" required. The Submittal review and approval process will be regularly monitored to avoid delays in the schedule and to identify any "long lead time" issues.

### ***Task 4 / Contract Schedule – Administration:***

J.T. Kruer & Company will periodically review and track the progress of the Contractor's work in comparison with the Contractor's construction schedule. In addition, J.T. Kruer & Company will generate an independent schedule as a means to describe an alternative approach to the project as required.

Contractor invoices will be reviewed, corrected and / or approved prior to submitting the invoices to the City for payment.

Change Orders are first reviewed from the field to assure accuracy and content. They are then checked against the responsibilities of the contractor as defined in the construction documents. Once a potential change order is determined to be warranted, the actual value of the change order is verified based on the contract requirements and the appropriate impact to the Project scope. Once these factors are addressed, a recommendation for approval / denial is forwarded to the Client for their review.

Value Engineering opportunities and a forward thinking approach to the project will be a key component of J.T. Kruer & Company's daily regimen. The work will be managed in an effort to identify cost saving opportunities and to avoid change orders.

A monthly report will be provided to the City Project Manager of all daily reports, submittal logs, project correspondence, billing and change order information.

**Task 5 / Construction Management - Field Observation:**

J.T. Kruer & Company will provide full-time field observation of the construction activities including Inspection Services and Project Management support. Acting as an extension and advocate for the City of Oceanside the following services will be provided:

- Provide the necessary coordination regarding having approved submittals and shop drawings in place prior to commencing work in the field.
- Throughout the submittal process and during field inspection, document that the project materials and installation processes conform with the project plans and specifications.
- During the project pothole process, J.T. Kruer & Company will coordinate with the Contractor, the Civil Engineer and the various sub – consultants to maximize the benefits derived from the potholing process.
- Maintain daily field records and photo logs of all project activities. Included in the daily reports will be Contractor crew staffing, equipment utilization, subs working at the jobsite, production rates, survey / geotechnical logs and an overall written description of the work performed – including any pertinent telephone and verbal conversations relevant to the project.
- Schedule, coordinate and review lab, shop and manufacturers test reports and results of field materials testing; including soil, concrete and asphalt tests.
- Schedule, coordinate and confirm project surveying.
- Provide documentation of all testing processes including preliminary and final test result logs.
- Monitor Contractor “working days” and issue a monthly Statement of Working Days.
- Prepare a final “Punch List” of all incomplete or deficient items of work and monitor completion of the “Punch List” items to ensure completion in a timely fashion. Perform the final inspection of the project.

**Task 6 / Geotechnical - Materials Testing – HDPE Special Inspection**

J.T. Kruer & Company will schedule all required materials testing and as-needed geotechnical services for the project including compaction testing, asphalt concrete test results, concrete testing and miscellaneous materials testing. In addition, “special inspections” services related to HDPE pipe installation will be provided including field observation and data logger reporting. Bureau Veritas, a sub-consultant to J.T. Kruer & Company, will provide these services.

**Task 7 / Construction Staking and Coordination:**

J.T. Kruer & Company will coordinate and track all survey services. Right of Way Engineering, a sub – consultant to J.T. Kruer & Company, will provide all survey services.

**Task 8 / Bi-Weekly Meetings:**

J.T. Kruer & Company will prepare agendas, meeting minutes and chair all bi - weekly progress and coordination meetings required by the project specifications and as needed through out the project. Project meetings will accelerate to a weekly schedule as required.

**POST CONSTRUCTION PHASE**

**Task 9 / Project Closeout:** At the completion of the project construction, coordinate with the Civil Engineer and the Contractor to provide an accurate set of red line drawings memorializing all modifications to the original plan design. Forward these red – lines to the Civil Engineer of Record to complete the final as – built / mylar process.

Assist the City with project closeout including Final Acceptance, Claims Negotiations, filing of the Notice of Completion, make recommendations for final payment, and release of retention or securities of the Contractor.

Within 30 days of filing notice of completion for the project, deliver to the City an electronic copy and hard copy (if requested) of all project daily reports, survey logs, geotechnical logs, meeting minutes / agenda, notes, photo logs and all final geotechnical reports.

