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DATE: November 12, 2008

TO: Chairman and Members of the Community Development Commission  
Honorable Mayor and City Council

FROM: Economic and Community Development Department

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT IN AN AMOUNT NOT TO EXCEED \$69,000 WITH CLAUSS CONSTRUCTION FOR SITE PREPARATION AT PROPERTY OWNED BY THE COMMUNITY DEVELOPMENT COMMISSION BOUNDED BY MISSION AVENUE, SEAGAZE DRIVE, MYERS STREET AND PACIFIC STREET**

### **SYNOPSIS**

Staff recommends that the Community Development Commission approve a Professional Services Agreement in an amount not to exceed \$69,000 with Clauss Construction of San Diego for site preparation for the area bounded by Mission Avenue to the north, Seagaze Drive to the south, Myers Street to the east, and Pacific Street to the west; and authorize the Executive Director to execute the agreement.

### **BACKGROUND**

Prior to future construction on the downtown beach hotel the site needs to be clear and free of structures and utilities. The scope of work includes demolishing structures and clearing the block bounded by North Pacific Street, Seagaze Drive, Myers Street, and Mission Avenue. It is necessary to demolish three whole and one half existing residential structures on the premises. The residential properties are located at 106 North Pacific Street, 109 North Myers Street, 104 Seagaze Drive, and 112 A&B Seagaze Drive. The structures have been vacant since September 2007, and the City has been paying for monthly security for the premises. The City has obtained an environmental analysis on the premises. Additionally, the Save Our Heritage Organization has removed the historically significant artifacts from the structures.

### **ANALYSIS**

A competitive bid was put out to four companies for the demolition on the premises. Three companies responded in time to be considered; Clauss Construction from San Diego for \$49,000; Whillock Contracting, Inc. of San Diego for \$90,000; and Dirt Cheap Demo from San Diego for \$109,311. Based on the thoroughness and competitive price of their bid, the City selected Clauss Construction. Demolition of the existing structures will include removal of all footings, foundations and concrete flatwork. The Contractor will be responsible for cutting and capping of existing water and sewer services at the

property edge, as well as hauling off all debris and associated dump fees. Additionally, the Contractor will remove and dispose of any remaining trees on premises. In order to completely clear the premises, the contractor will clear the northern half of the premises for an additional \$20,000, as well as demolish the existing structures. This will include removal of 12,369 square feet of asphalt from the northern half of the premises, as well as removal of any remaining trees. The Contractor will also be responsible for clearing all bushes, weeds, and tree stumps and hauling away associated debris. At no time will the Graves residence at 102 North Pacific Street be altered, and all work will take place around the structure. The Contractor will be responsible for best management practices for dust control.

### **FISCAL IMPACT**

The agreement in the amount of \$69,000 will be funded from the Redevelopment Pier Area Acquisition and Relocation CIP (591.879412) which has a current available balance of \$244,835. Sufficient funds are available.

### **INSURANCE REQUIREMENTS**

The City's standard insurance requirements will be met over the term of the agreement.

### **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.

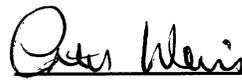
**RECOMMENDATION**

Staff recommends that the Community Development Commission approve a Professional Services Agreement in an amount not to exceed \$69,000 with Clauss Construction of San Diego for site preparation for the area bounded by Mission Avenue to the north, Seagaze Drive to the south, Myers Street to the east, and Pacific Street to the west; and authorize the Executive Director to execute the agreement.

PREPARED BY:

SUBMITTED BY:

  
Curtis M. Jackson  
Property Agent

  
Peter A. Weiss  
Executive Director/City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Jane McVey, Economic & Community Development Director

Kathy Baker, Redevelopment Manager

Douglas E. Eddow, Real Property Manager

Teri Ferro, Financial Services Director


**CITY OF OCEANSIDE**

**PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: Oceanside Beach Resort Site Preparation**

THIS AGREEMENT dated \_\_\_\_\_, 2008 for identification purposes is made and entered into by and between the **CITY OF OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION**, a public agency, hereinafter designated as "COMMISSION", and **CLAUSS CONSTRUCTION**, hereinafter designated as "CONTRACTOR."

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. **SCOPE OF WORK.** The property is within a one block area adjacent to the Pacific Ocean in Oceanside, California that is the proposed location of a new resort development. As a result of this project it is necessary to demolish three whole and one half residential structures on the property.

Demolition of the existing structures will include complete demolition of the structures. Removal of all footings, foundations and concrete flatwork on the premises will be required, as well as removal of 12,369 feet of asphalt off northern half of property. Contractor will be responsible for cutting and capping of existing water and sewer services at the property edge, as well as hauling off all debris and associated dump fees. Contractor will be responsible for best management practices for dust control and eventual rough grade of premises. Additionally, Contractor will remove and dispose of any remaining trees on premises.

The three and one half residential properties within the project area of the proposed Oceanside Beach Resort project are located at 106 North Pacific Street, 109 North Myers Street, 104 Seagaze, and 112A&B Seagaze Drive.

Contractor shall provide the services as indicated in Exhibit "A", which is incorporated herein by reference.

2. **INDEPENDENT CONTRACTOR.** CONTRACTOR'S relationship to the COMMISSION shall be that of an independent contractor. CONTRACTOR shall have no authority, express or implied, to act on behalf of the COMMISSION as an agent, or to bind the COMMISSION to any obligation whatsoever, unless specifically authorized in writing by the Redevelopment Manager. The CONTRACTOR shall not be authorized to communicate directly with, nor in any

## **Oceanside Beach Resort Site Preparation**

way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the Redevelopment Manager.

CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONTRACTOR shall report to the COMMISSION any and all employees, agents, and Contractors performing work in connection with this project, and all shall be subject to the approval of the COMMISSION.

3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR 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 CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

- 3.1 As required by the California Labor Code, CONTRACTOR and any subcontractors, shall pay all workers employed on this project not less than the wages specified in the General Prevailing Wage Determination made by the Director of Industrial Relations that is in effect on the date of the invitation for bids for this project.

4. **LIABILITY INSURANCE.**

- 4.1. CONTRACTOR shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

- 4.2 CONTRACTOR shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

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Automobile Liability Insurance

\$ 1,000,000

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

- 4.3** If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the COMMISSION may require additional coverage to be purchased by the CONTRACTOR to restore the required limits. The CONTRACTOR shall also notify the COMMISSION'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 CONTRACTOR resulting from any of the CONTRACTOR'S work.
- 4.4** All insurance companies affording coverage to the CONTRACTOR for the purposes of this Section shall add the COMMISSION of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the COMMISSION as additional insured shall be primary insurance and other insurance maintained by the COMMISSION of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.5** All insurance companies affording coverage to the CONTRACTOR 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.
- 4.6** All insurance companies affording coverage shall provide thirty (30) days written notice to the COMMISSION should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7** CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the COMMISSION General Counsel, concurrently with the submittal of this Agreement.
- 4.8** CONTRACTOR shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a suspension or termination of work under the Agreement.
- 4.9** Maintenance of insurance by the CONTRACTOR as specified in this Agreement

## Oceanside Beach Resort Site Preparation

shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.

5. **CONTRACTOR'S INDEMNIFICATION OF COMMISSION.**

CONTRACTOR shall indemnify and hold harmless the COMMISSION and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the CONTRACTOR, 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 or active negligence of the COMMISSION, its officers, agents, or employees. CONTRACTOR'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the COMMISSION, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONTRACTOR at its own expense shall, upon written request by the COMMISSION, defend any such suit or action brought against the COMMISSION, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONTRACTOR.

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

6. **COMPENSATION.** CONTRACTOR'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$69,000.

No work shall be performed by CONTRACTOR in excess of the total contract price without prior written approval of the Redevelopment Manager. CONTRACTOR shall obtain approval by the Redevelopment Manager prior to performing any work, which results in incidental expenses to COMMISSION.

7. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the Redevelopment Manager within ninety (90) calendar days from the date of this agreement.

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

## Oceanside Beach Resort Site Preparation

9. **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 COMMISSION.

The CONTRACTOR 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.

10. **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.

*Remainder of Page Left Blank Intentionally*  
[Signatures on Next Page]

**Oceanside Beach Resort Site Preparation**

**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 CONTRACTOR and the COMMISSION.

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

**THE CITY OF OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION**

Date \_\_\_\_\_

By: \_\_\_\_\_  
Peter Weiss, Executive Director  
Community Development Commission

APPROVED AS TO FORM:

By: \_\_\_\_\_  
General Counsel

**CONTRACTOR**

**CLAUSS CONSTRUCTION**

Date 11/03/08

By: Patrick M. Clauss  
Name: Patrick M. Clauss  
Title: President

Date 11/03/08

By: Patrick M. Clauss  
Name: Patrick M. Clauss  
Title: Secretary

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

# CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

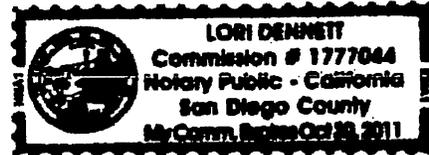
} ss

On November 3, 2008 before me, Lori Dennett, Notary Public, personally appeared Patrick M. Claus 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 Lori Dennett (Seal)



## Oceanside Beach Resort Site Preparation

### EXHIBIT "A"

#### Scope of Work

##### Summary of Work:

- Complete demolition of 3 ½ houses on Seagaze and Pacific St.
- Removal of all footings, foundations and flatwork on premises
- Removal of 12,369 feet of asphalt off northern half of property
- Removal of remaining palm trees on premises
- Cut and cap of water and sewer at property edge
- Hauling off all debris and dump fees
- Dust control and rough grade of property
- Removal and disposal of two palm trees

##### Exclusions:

- Removal of salvage for others.
  - Contaminated soils
  - Disconnection or rerouting of dry utilities
  - Earthwork.
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