

STAFF REPORT



ITEM NO. 10
CITY OF OCEANSIDE

DATE: November 14, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF AMENDMENT 1 IN THE AMOUNT OF \$115,928 TO THE PROFESSIONAL SERVICES AGREEMENT WITH HDR ENGINEERING, INC., FOR THE EL CAMINO REAL BRIDGE WIDENING AT STATE ROUTE 78 PROJECT STUDY REPORT**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 in the amount of \$115,928 to the professional services agreement with HDR Engineering, Inc., for the El Camino Real Bridge Widening at State Route 78 Project Study Report, to add evaluation of reconstruction of the interchange and an updated traffic analysis to the scope of work; authorize the City Manager to execute the amendment; approve a budget appropriation in the amount of \$39,841 from unallocated Transnet funds to complete the project funding.

BACKGROUND

On October 15, 2003, the City Council adopted a resolution to initiate the project study report (PSR) for the bridge widening on El Camino Real at SR 78. As part of that resolution, interim re-striping of the bridge on El Camino Real from four to six lanes was approved. The interim re-striping was completed in November 2003.

Requests for proposal were mailed to ten engineering firms. Of those, two responded with proposals. Interviews were conducted with each of the applicants, and HDR Engineering, Inc., was selected as the most qualified firm to complete the PSR.

On April 20, 2005, the City Council awarded a contract for the El Camino Real Bridge Widening PSR with a total contract amount of \$223,061. The PSR is the initial document prior to the environmental report. The cities of Oceanside and Carlsbad, in cooperation with Caltrans, will develop a fair-share cost-sharing arrangement for the ultimate bridge widening to be approved by both city councils.

ANALYSIS

Subsequent to the initiation of the scope of services, HDR was directed to modify the scope and fee to develop an additional PSR that evaluated the full reconstruction of the El Camino Real at SR 78 Interchange, assuming that the potential future interchange on Rancho Del Oro at SR 78 would not be constructed. HDR was authorized to proceed with the expanded scope of services. Tasks completed to date include aerial photo and mapping, initial contact with utilities, existing traffic data collection, preliminary evaluation of interchange concepts, and general project management. These additional services resulted in a total additional cost of \$94,639.

In order for HDR to restart the El Camino Real bridge Widening PSR, it will be necessary to update the traffic analysis. The cost of this update is \$21,289. Therefore, an amendment in the amount of \$115,928 to the original professional services agreement is needed to fulfill the amended scope of the agreement.

FISCAL IMPACT

The combined amended project budget totals \$348,989. A carry forward of \$320,148 from FY 06-07 (212.775606.5392) plus the requested additional \$39,841 (212.3300) will bring the budgeted funds to \$359,989, including a 3 percent contingency of \$11,000. Therefore, sufficient funds are available.

INSURANCE REQUIREMENTS

The City's standard insurance has been provided.

COMMISSION OR COMMITTEE REPORT

Not applicable.

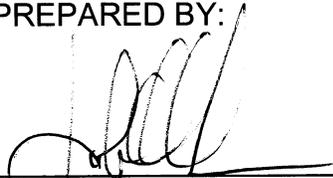
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve Amendment 1 in the amount of \$115,928 to the professional services agreement with HDR Engineering, Inc., for the El Camino Real Bridge Widening at State Route 78 Project Study Report, to add evaluation of reconstruction of the interchange and an updated traffic analysis to the scope of work; authorize the City Manager to execute the amendment; approve a budget appropriation in the amount of \$39,841 from unallocated Transnet funds to complete the project funding.

PREPARED BY:



John Amberson
Transportation Planner

SUBMITTED BY:



Peter A. Weiss
City Manager

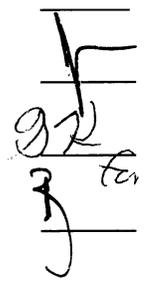
REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Joseph Arranaga, Acting Deputy Public Works Director

Scott O. Smith, City Engineer

Paul Bussey, Interim Financial Services Director



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**CITY OF OCEANSIDE
AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT**

PROJECT: ECR Bridge Widening at SR78 – 212.775606

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment") is made and entered into this ____ day of _____, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and HDR Engineering, Inc., hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS, City and CONSULTANT are the parties to that certain Professional Services Agreement dated April 20th 2005, hereinafter referred to as the "Agreement", wherein CONSULTANT agreed to provide certain services to the City as set forth therein;

WHEREAS, the parties desire to amend the Agreement to re-start the preparation of the Project Study Report (PSR) for the SR-78/El Camino Real Bridge Widening Project.

AMENDMENT

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

SECTION 1.0, SCOPE OF WORK: Is hereby amended to include the following additional work described herein:

1. Extra Work Authorized:
 - a. To evaluate the full reconstruction of the interchange assuming that the Rancho Del Oro interchange was not constructed, which included:
 - i. Aerial photo and mapping;
 - ii. Initial contact with utilities;
 - iii. Existing traffic data collection; and
 - iv. Preliminary evaluation of interchange concepts.
2. Project Re-Start and Remobilization; and
3. Update Traffic Analysis.

SECTION 2.0, TIMING REQUIREMENTS: Is hereby amended to allow 14 months from the date this amendment is signed by CITY.

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SECTION 2.2, PHASE I: CONSULTANT shall prepare and deliver a copy of the first draft of the Project Study Report to the City Engineer no later than November 30, 2008. No work shall be performed by Consultant beyond the Phase I stage until the City Engineer has given written approval of the preliminary design and authorization to perform Phase II.

SECTION 2.3, PHASE II: CONSULTANT shall prepare and deliver a copy of the second draft of the Project Study Report to the City Engineer no later than December 30, 2008. No work shall be performed by Consultant beyond the Phase II stage until the City Engineer has given authorization to perform Phase III.

SECTION 2.4, PHASE III: CONSULTANT shall prepare and deliver the final Project Study Report to the City Engineer no later than January 30, 2009.

SECTION 13, COMPENSATION: Is hereby amended by adding an amount of **\$115,928** for the additional work authorized and to re-start the project as set forth above, increasing the total compensation to an amount not to exceed **\$338,990**.

SECTION 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. Consultants compensation for all work performed in accordance with this agreement shall not exceed the total contract price of **\$338,990**.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval by 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.

SECTION 14.0, TERMINATION OF AGREEMENT: The Term of this agreement and amendment shall commence on the date it is signed by the later of the parties and continue for a period of 18 months from the date of such signature. CONSULTANT may request an extension of the agreement for a period of one additional year, which may be allowed by CITY at the sole discretion of the City Engineer.

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.

ECR Bridge Widening at SR78 – 212.775606

SECTION 16.0 ENTIRE AGREEMENT: This amendment together with the agreement (4/20/2005) comprises the entire integrated understanding between the CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representatives or agreements. If there is any disagreement between the terms of this Amendment and the terms of the Agreement, this Amendment shall control.

SECTION 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:

CITY OF OCEANSIDE
CITY ENGINEER
300 NORTH COAST HWY.
OCEANSIDE, CA 92054

TO CONSULTANT:

HDR ENGINEERING, INC.
ATTN: WILLIAM BENNETT, P.E.
3230 El Camino Real, Suite 200
Irvine, CA 92602

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 communications 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 requested, addressed to the offices of the party to whom the communications is to be sent, as designated above.

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SECTION 21.0 SIGNATURES. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the CONSULTANT and the CITY.

SECTION 22.0 MISCELLANEOUS. The Transportation Manager is hereby replaced with the City Engineer whenever the title appears in the agreement.

Except as expressly set forth in this amendment, the agreement shall remain in full force and effect and is hereby ratified and reaffirmed.

IN WITNESS WHEREOF the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures this _____ day of _____, 2007.

HDR ENGINEERING, INC.

CITY OF OCEANSIDE

By: 
William Bennett, P.E., Project Manager

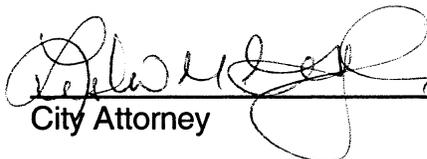
By: _____
Peter Weiss,  City Manager

By: 
Brent Felker, P.E., Principal-In-Charge

APPROVED AS TO FORM:

47-0680568

Employer ID No.



City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

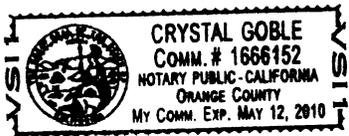
State of California

County of Orange

On June 18, 2007 before me, Crystal Goble, Notary Public

personally appeared William Bennett and Brent Felker

- 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 of Notary Public (Crystal Goble)

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: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

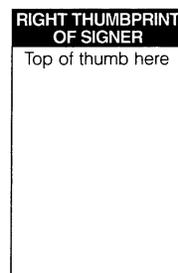
- Individual
Corporate Officer - Title(s):
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:



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: _____

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CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 20th day of April, 2005, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as “CITY”, and HDR Engineering, 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 engineering design and support services for the Project Study Report (PSR) for the El Camino Real/State Route 78 Bridge Widening project.

- 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 Transportation Manager 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 Transportation Manager, under the authority of the City Manager, shall be the CITY’S authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The Transportation Manager may delegate

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authority in connection with this Agreement to the Transportation Manager's designees. For the purposes of directing the CONSULTANT'S performance in accordance with this Agreement, the Transportation Manager delegates authority to Richard Clements, Project Manager, Transportation Division.

- 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 project report.
- 1.1.4 Design, prepare and submit to the Transportation Manager a final project study report as described in the Scope of Work, and in the time and manner set forth in this Agreement.
- 1.1.5 Provide assistance to the City upon request by Transportation Manager to include the services listed below:
 - a. Hold regular project status meetings and provide meeting minutes for these meetings.
 - b. Prepare needed reports and notices for public meetings.
 - c. Attend public meetings with the Transportation Manager or his designees.
- 1.2 **SERVICES PROVIDED BY CITY.** The CITY shall perform the following services:
 - 1.2.1 Provide access to any public improvement plans and records needed for CONSULTANT's reference.
 - 1.2.2 Obtain all necessary permits from other regulatory agencies and other Departments. CONSULTANT shall participate in the completion of such forms but CITY will submit these and pay for any applicable fees.
 - 1.2.3 Upon request, verify the location of existing CITY owned utilities.

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1.2.4 Provide all legal advertising mailings and postings required.

1.2.5 Provide overall project management.

2.0 TIMING REQUIREMENTS

2.1 Time is of the essence in the performance of work under this Agreement and the following timing requirements shall be strictly adhered to unless otherwise modified in writing as set forth in Section 2.6. 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 Phase I. CONSULTANT shall prepare and deliver a copy of the first draft of the project study report to the Transportation Manager no later than February 15, 2006. No work shall be performed by CONSULTANT beyond the Phase I stage until the Transportation Manager has given written approval of the preliminary design and authorization to perform Phase II.

2.3 Phase II. CONSULTANT shall prepare and deliver a copy of the second draft of the project study report to the Transportation Manager no later than March 29, 2006. No work shall be performed by CONSULTANT beyond the Phase II stage until the Transportation Manager has given authorization to perform Phase III.

2.4 Phase III. CONSULTANT shall prepare and deliver the final project study report to the Transportation Manager no later than May 3, 2006.

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

2.6 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

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performance of its professional services, CONSULTANT shall use the degree of care and skill ordinarily exercised by CONSULTANT under similar conditions. Contract specifications shall conform to the CITY'S specification procedures and the format of the CITY'S standard form Contract Documents for Public Works Construction.

- 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 Transportation Manager. 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 Transportation Manager. CONSULTANT shall be sole 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 Transportation Manager.

- 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.

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

Comprehensive General Liability Insurance
(bodily injury and property damage)

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

Commercial General Liability Insurance
(bodily injury and property damage)

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

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

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

7.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this Agreement. Insurance coverage provided to the CITY as 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.

7.5 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

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state or be rated as A-X or higher by A.M. Best.

- 7.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 7.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 7.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 7.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
- 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 or lawsuits for damages to persons or property arising out of the conduct, negligent acts, errors, omissions or wrongful acts of conduct of the CONSULTANT or its employees, agents, subcontractors or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, expert fees, attorneys' fees and liability

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assessed against or incurred by the CITY, its officers, agents or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT, at its own expense, shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents or employees resulting or arising from the tortuous 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 Transportation Manager 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.

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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 Transportation Manager. CONSULTANT'S compensation for all work performed in accordance with this Agreement shall not exceed the total contract price of \$223,061.10.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the Transportation Manager. CONSULTANT shall obtain approval by the Transportation Manager 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 Transportation Manager for verification of billings, within a reasonable time of the Transportation Manager'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 Transportation Manager, and based upon the following partial payment schedule:

13.4.1 Prior to the first submittal of the concept plans, partial payments shall not exceed \$ 75,000.00.

13.4.2 Prior to the completion of Public Scoping Meeting, partial payments shall not exceed \$150,000.00.

13.4.3 Final payment shall be made to CONSULTANT upon CONSULTANT's preparation of the final Project Study Report to the satisfaction of the

[ECR Bridge Widening at SR78 – 212.775606]

Transportation Manager.

- 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 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

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or in any manner other than by an Agreement in writing, signed by the parties hereto.

19.0 CLAIMS.

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

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:

City of Oceanside
Transportation Manager
300 North Coast Highway
Oceanside, CA 92054

TO CONSULTANT:

HDR Engineering, Inc.
attn: William Bennett, P.E.
1936 E. Deere Avenue, Suite 220
Santa Ana, CA 92705

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.

[ECR Bridge Widening at SR78 – 212.775606]

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:

HDR ENGINEERING, INC.

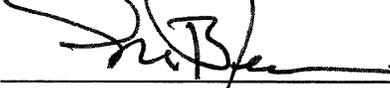
By: 
William Bennett, P.E., Project Manager

By: 
Brent Felker, P.E., Principal-In-Charge

47-0680568

Employer ID No.

CITY OF OCEANSIDE

By: 
Steven R. Jepsen, City Manager

APPROVED AS TO FORM:

 DEPUTY
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of Orange } ss.

On April 6, 2005 before me, Catherine M. Wightman,
(DATE) (NOTARY)
 personally appeared Brent B. Feller
SIGNER(S)

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 signatures(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.

Catherine M. Wightman
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER
- _____
- TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____
- _____
- _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

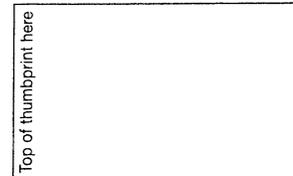
NUMBER OF PAGES

DATE OF DOCUMENT

OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

RIGHT THUMBPRINT
OF
SIGNER



ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of Orange } ss.

On April 6, 2005 before me, Catherine M. Wightman,
(DATE) (NOTARY)
 personally appeared William E. Bennett
SIGNER(S)

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 signatures(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.

Catherine M. Wightman
NOTARY'S SIGNATURE

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- OTHER: _____
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- _____

DESCRIPTION OF ATTACHED DOCUMENT

_____ TITLE OR TYPE OF DOCUMENT

_____ NUMBER OF PAGES

_____ DATE OF DOCUMENT

_____ OTHER

SIGNER IS REPRESENTING:
 NAME OF PERSON(S) OR ENTITY(IES)

RIGHT THUMBPRINT
 OF
 SIGNER

