



DATE: February 24, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$55,400 WITH RVL ASSOCIATES OF COSTA MESA FOR THE CITY OF OCEANSIDE'S WASTEWATER TREATMENT FACILITIES TECHNICALLY BASED LOCAL LIMITS STUDY**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council approve a professional services agreement in the amount of \$55,400 with RvL Associates of Costa Mesa for the City of Oceanside's Wastewater Treatment Facilities Technically Based Local Limits Study; and authorize the City Manager to execute the agreement.

BACKGROUND

The federal pretreatment regulations in 40 CFR 403.5(c) require publicly owned treatment works to develop and enforce local limits for discharge and by-products and to implement the general and specific prohibitions in 40 CFR 403.5(a) and (b). The pretreatment regulations also require publicly owned treatment works to continue to develop these local limits as necessary and effectively enforce such limits.

The National Pollutant Discharge Elimination System (NPDES) regulations in 40 CFR 122.44(j) (2) (ii) require publicly owned treatment works to provide a current Technically Based Local Limits Study in conjunction with permit reissuance. The City of Oceanside's current NPDES permit expires August 10, 2010.

On November 19, 2009, the California Regional Water Quality Control Board in San Diego conducted an audit of the City's pretreatment program and indicated that the City's existing local limits are not technically based from the standpoint that there is no assurance that they are protective of the City's two publicly owned treatment works (La Salina and San Luis Rey Wastewater Treatment Plants).

The Environmental Protection Agency (EPA) requires that municipalities provide a Technically Based Local Limits Study report using the EPA's July 2004 Local Limits Development Guidance. Since the development of the City's last Technically Based

Local Limits, the number of new industrial facilities in Oceanside has increased significantly. The revised Technically Based Local Limits Study must include adequate adjustments and take into account all the changes such as the current flow and pollutant loads contributed by the existing industrial facilities in Oceanside.

ANALYSIS

The purpose of the study is to develop a report containing the Technically Based Local Limits for the City's two treatment plants that will meet all regulatory requirements and protect the treatment plants, its discharge, and by-products from pass-through or interference caused by the regulated (industrial) dischargers. To develop Technically Based Local Limits using the 2004 EPA Guidelines, a mass balance around the City's treatment plants will be used to determine the removal rates for each pollutant of concern. Oceanside will submit the report to the California Regional Water Quality Control Board, San Diego Region, for approval.

On September 25, 2009, staff sent Requests for Proposals to 5 qualified consulting firms to provide consulting services for its sanitary sewer Technically Based Local Limits Study. Proposals were due on October 23, 2009; staff received one proposal from RvL Associates and one consultant, Environmental Engineering & Contracting, Inc., contacted staff to advise they would not be responding to the request for proposals.

FISCAL IMPACT

The Miscellaneous Sewer Projects fund (909978000722) has an available balance of \$673,946. The consultant's cost associated with developing a Technically Based Local Limits Study using the 2004 Federal EPA Guidelines is \$55,400. Therefore, adequate funds are available.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

The Utilities Commission approved staff's recommendation at its regularly scheduled meeting on January 19, 2010.

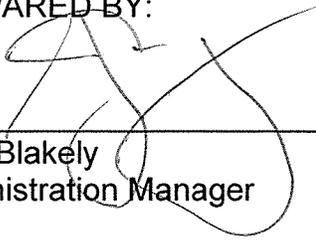
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

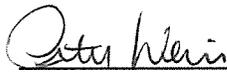
Staff and the Utilities Commission recommend that the City Council approve a professional services agreement in the amount of \$55,400 with RvL Associates of Costa Mesa for the City of Oceanside's Wastewater Treatment Facilities Technically Based Local Limits Study; and authorize the City Manager to execute the agreement.

PREPARED BY:



Greg Blakely
Administration Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manger

Lauren M. Wasserman, Interim Water Utilities Director

Teri Ferro, Financial Services Director

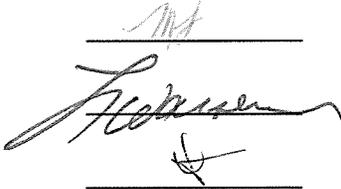


Exhibit A: Request for Proposal Mailing List
Exhibit B: Professional Services Agreement

Technically Based Local Limits Study

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, dated _____, 2009 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and _____, 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 technically based local limits study for the CITY in accordance with the terms set forth in this Agreement.
- C. CITY desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to CITY as an independent contractor.
- D. CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education and expertise.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1.0 **SCOPE OF WORK.** The CONSULTANT desires to prepare a Technically Based Local Limits study and is more particularly described in the CONSULTANT's proposal dated October 22, 2009 attached hereto and incorporated herein as Exhibit A.
- 1.1 **PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.** The professional services to be performed by CONSULTANT shall consist of but not be limited to the following:
 - 1.1.1 Work closely with the Water Utilities Director in performing work in accordance with this Agreement in order to receive clarification as to the result which the CITY expects to be accomplished by CONSULTANT. The Water Utilities Director, under the authority of the City Manager, shall be the CITY'S authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The Water Utilities Director may delegate authority in connection with this Agreement to the Water Utilities Director's

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designees. For the purposes of directing the CONSULTANT'S performance in accordance with this Agreement, the Water Utilities Director delegates authority to Mo Lahsaie.

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.

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

1.2.1 Provide access to all public documents and records and furnish one copy of the existing industries discharge reports requested.

1.2.2 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 2.3. 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 prepare and deliver the final local limits study report to the Water Utilities Director within 91 calendar days from the date of the Notice to Proceed.

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

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

3.0 **STUDY CRITERIA AND STANDARDS.** All work shall be performed in accordance with applicable Environmental Protection Agency Local Limit

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Development Guideline dated July 2004, CITY, state and federal codes and criteria. In the performance of its professional services, CONSULTANT shall use the degree of care and skill ordinarily exercised by consultants under similar conditions.

- 4.0 **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the Water Utilities Director. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of any entity for this project without the prior written authorization by the Water Utilities Director. 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 Water Utilities Director.

6.0 **LIABILITY INSURANCE.**

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

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

Comprehensive General Liability Insurance
(bodily injury and property damage)

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

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Commercial General Liability Insurance (bodily injury and property damage)

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

Automobile Liability Insurance \$ 1,000,000

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

- 6.2.2 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.
- 6.3 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this Agreement. Insurance coverage provided to the CITY as an additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 6.4 All insurance companies affording coverage to the CONSULTANT pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 6.5 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 6.6 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

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- 6.7 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 6.8 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
- 7.0 **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.

- 8.0 **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 negligent acts, errors, omissions or wrongful acts or conduct of the CONSULTANT or its employees, agents, subcontractors or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, expert fees, attorneys' fees and liability assessed against or incurred by the CITY, its officers, agents or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT, at its own expense, shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents or employees resulting or arising from the tortious acts or omissions of the CONSULTANT.

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

- 9.0 **ERRORS AND OMISSIONS.** In the event that the Water Utilities Director 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

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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.

10.0 **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.

11.0 **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.

12.0 **COMPENSATION.**

12.1 For work performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT in accordance with the schedule of billing rates set forth in Exhibit "A", attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this Agreement without prior written approval of the Water Utilities Director. CONSULTANT'S compensation for all work performed in accordance with this Agreement shall not exceed the total contract price of \$ 55,400.

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.

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- 12.2 CONSULTANT shall maintain accounting records including the following information:
- 12.2.1 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.
 - 12.2.2 All incidental expenses including reproductions, computer printing, postage, mileage and subsistence.
- 12.3 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.
- 12.4 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:
- 12.4.3 Final payment shall be made to CONSULTANT upon CONSULTANT's preparation of the local limits study report to the satisfaction of the Water Utilities Director.
- 13.0 **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.
- 14.0 **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.

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15.0 **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.

16.0 **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.

17.0 **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.

18.0 **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.

19. **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
Water Utilities Director
300 North Coast Highway
Oceanside, CA 92054

TO CONSULTANT:

Mr. Richard W. von Langen, PE
RVL Associates
2077 Mandarin Drive
Costa Mesa, CA 92626

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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.

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

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

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RVL ASSOCIATES

CITY OF OCEANSIDE

By: *Richard W. von Langen*
Name/Title
Richard W. von Langen

By: _____
Peter A. Weiss, City Manager

Date: *December 11, 2009*

Date: _____

By: _____
Name/Title

APPROVED AS TO FORM:

Date: _____

Debra H. [Signature] IDCA
City Attorney

Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On Dec. 11, 2009 before me, M. Bush
(Here insert name and title of the officer)

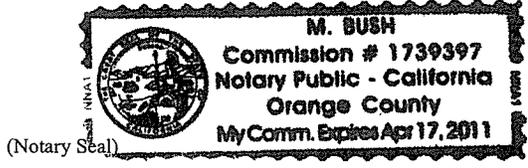
personally appeared Richard William vonLangen

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]
Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

DESCRIPTION OF THE ATTACHED DOCUMENT

Professional Services
(Title or description of attached document)

Agreement
(Title or description of attached document continued)

Number of Pages 9 Document Date 12/11/09

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document