

STAFF REPORT



ITEM NO. 16

CITY OF OCEANSIDE

DATE: March 14, 2007

TO: Honorable Mayor and City Council Members

FROM: Water Utilities Department

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH TETRA TECH, INC., OF OCEANSIDE IN THE AMOUNT OF \$1,231,000 FOR THE OCEANSIDE SEAWATER DESALINATION PILOT FACILITY AND FEASIBILITY STUDY**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council approve a professional services agreement with Tetra Tech, Inc., of Oceanside in an amount not to exceed \$1,231,000 for the Oceanside Seawater Desalination Pilot Facility and Feasibility Study project, and authorize the City Manager to execute the agreement.

BACKGROUND

The City of Oceanside's main sources of water are imported water from the San Diego County Water Authority that is treated at the Robert A. Weese Filtration Plant (Weese), brackish groundwater that is treated at the Mission Basin Groundwater Purification Facility (MBGPF) (Exhibit A), and recycled water. The current capacity of the Weese plant is 25 million gallons per day (MGD). The MBGPF has a treatment capacity of 6.4 MGD, with current flows at about 2 MGD. To reach the full capacity, additional wells are being drilled. Approximately .5 MGD of recycled water is produced at the San Luis Rey Water Reclamation Plant (SLRWRP).

ANALYSIS

The potable water demand in 2006 was approximately 35,000 acre-feet per year (AF/yr). The service population is currently approximately 176,000. At build out, the population is projected to increase to about 206,600 with a resulting water demand of 41,100 acre-feet per year (AF/yr). The peak month demand is projected at 48.96 MGD. The City of Oceanside Water Master Plan, currently being updated, has identified seawater desalination as one of the major alternatives for meeting future demands for potable water.

The City of Oceanside submitted a grant application titled, "Proposition 50 Water Desalination Grant Proposal for the City of Oceanside Seawater Desalination Project" to the California Department of Water Resources dated March 24, 2006. This proposal was submitted to continue with the objective of finalizing a well drilling site in order to set up a 50 gallons per minute (GPM) Reverse Osmosis (RO) pilot facility; prepare a study to plan for the most feasible pipeline alignment from the well to the Mission Basin Groundwater Purification Facility (MBGPF), and to provide a feasibility study for the Seawater Desalination Project, for the City of Oceanside. The City has not received a decision on the grant application submitted.

Based on the information developed for this grant proposal a request for proposal was sent out last September to nineteen consultants, including seven in Oceanside (Exhibit B). On October 10, 2006, proposals were received from four of the solicited consultants; three were from Oceanside. The proposals were evaluated and the proposal in an amount not to exceed \$1,231,000 from Tetra Tech, Inc. was selected. Tetra Tech and their sub-consultant SPI have performed a number of desalination projects over the years, including the West Basin Seawater Pilot project for West Basin Municipal Water District and the Seawater Prototype Desalination Plant for the City of Long Beach. Over the years Tetra Tech has also performed a number of design and construction management projects for the Water Utilities Department and has excelled in their performance.

FISCAL IMPACT

In Fiscal Year 2005-2006, the Oceanside Seawater Desalination project (715.858247) had a total of \$993,086 left to carry forward for Fiscal Year 2006-2007. Staff transferred \$275,000 from the Pacific Street Bridge Waterline project because the cost for that project is less than projected. Adequate funds are available for the project.

COMMISSION OR COMMITTEE REPORT

The Utilities Commission approved staff's recommendation at its regular meeting on February 20, 2007.

CITY ATTORNEY'S ANALYSIS

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

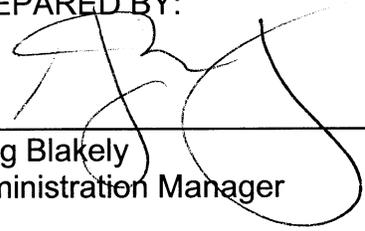
INSURANCE REQUIREMENTS

The City's standard insurance requirements are included in the proposed Professional Services Agreement.

RECOMMENDATION

Staff and the Utilities Commission recommend that the City Council approve a professional services agreement with Tetra Tech, Inc., of Oceanside in an amount not to exceed \$1,231,000 for the Oceanside Seawater Desalination Pilot Facility and Feasibility Study project, and authorize the City Manager to execute the agreement.

PREPARED BY:



Greg Blakely
Administration Manager

SUBMITTED BY:



Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Lonnie Thibodeaux, Water Utilities Director

Nita McKay, Financial Services Director



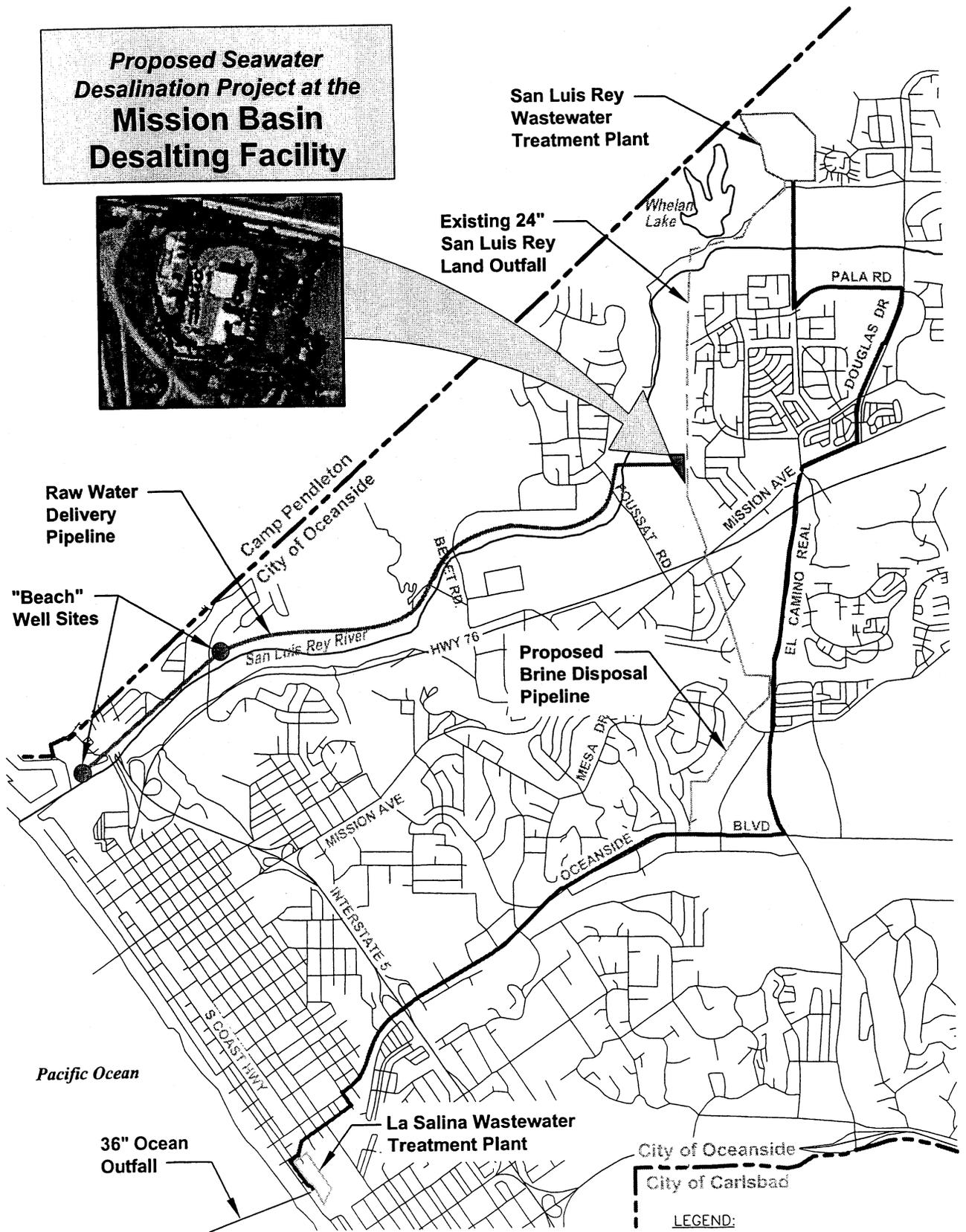
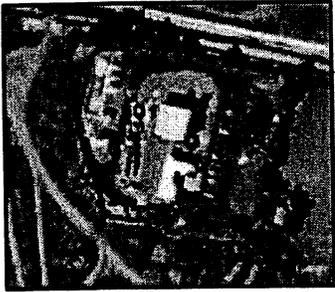




Exhibit A - Site map

Exhibit B - Request for proposal mailing list

**Proposed Seawater
Desalination Project at the
Mission Basin
Desalting Facility**



City of Oceanside
City of Carlsbad

LEGEND:

- Desalination Supply Pipeline
- Proposed SLR Land Outfall
- Existing SLR Land Outfall & Proposed Brine Disposal Pipeline

Ocean Desalter RFP Mailing List

Company	Address	City	State	Zip	First Name	Last Name	Title	Phone	Fax
Lee & Ro, Inc.	10225 Barnes Canyon Road, Suite A-200	San Diego	CA	92121	Frank	Blehl		858-558-4411	
Parsons Engineering Science, Inc.	110 West A Street, Suite 1050	San Diego	CA	92101	Gregory/Richard	McBain/Trembath			
Richard Brady & Associates	4909 Murphy Canyon Road, Suite 220	San Diego	CA	92123	Richard	Brady			
Kennedy/Jenks Consultants	16855 W. Bernardo Drive, Suite 360	San Diego	CA	92127	Matt	Tebbetts		858-676-3620	
Boyle Engineering Corp.	7807 Convoy Court, Suite 200	San Diego	CA	92111	Michael	Boraks			
Malcolm Pirnie, Inc.	1525 Faraday Avenue, Suite 290	Carlsbad	CA	92008	Marc	Weinberger, PE	Senior Associate	760-602-3807	760-602-3838
HDR Engineering, Inc.	26250 Enterprise Court, Suite 150	Lake Forest	CA	92630	Robyn/Christina	Vailelas/Song	Senior Marketing Cod	949-454-4814/949-454-4800	
Dudek & Associates, Inc.	605 Third Street	Encinitas	CA	92024	Patty	Post		760-942-5147	
CH2M Hill	402 W. Broadway, Suite 1450	San Diego	CA	92101	Bob	Pruitt		619-687-0110	
Brown and Caldwell	9665 Chesapeake Drive, Suite 201	San Diego	CA	92123	Nancy E.	Gardner		858-514-8822	
Montgomery Watson	9444 Farnham, Suite 300	San Diego	CA	92123	Jeff	Thornbury	Marketing Director	858-751-1200	
Parsons Brinckerhoff	401 B Street, Suite 1450	San Diego	CA	92101	John	O'Donnell, PE			
RW Beck, Inc.	4167 Avenida De La Plata, Suite 115	Oceanside	CA	92056	John	Christopher		760-643-9617	
Infrastructure Engineering Corporation	717 Pier View Way	Oceanside	CA	92054	Preston	Lewis		760-529-0729	
Cornerstone Engineering, Inc.	620 Mission Avenue	Oceanside	CA	92054	Steve	Barger		760-722-3495	
PBS&J	2303 Nicklaus Drive	Oceanside	CA	92056	Skip	Griffin			
Water 3 Engineering, Inc.	702 Civic Center Drive	Oceanside	CA	92054	Don	Buntis		760-737-8195	
Carollo Engineers	4167 Avenida De La Plata, Suite 114	Oceanside	CA	92056	Dennis	Wood			
Tetra Tech ASL, Inc.	2141 El Camino Real, Suite J	Oceanside	CA	92054	Howard/Steve	Arnold/Tedesco		760-754-0550	

**Oceanside Seawater Desalination
Pilot Facility and Feasibility Study - 715-858247**

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and TETRA TECH, 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.** CONSULTANT will provide a pilot facility and feasibility study for the Oceanside Seawater Desalination project. The project is more particularly described in CONSULTANT'S proposal dated October 9, 2006, and attached hereto and incorporated 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

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

- 1.1.2 In compliance with Government Code section 7550, the CONSULTANT shall include a separate section in the proposal prepared pursuant to this Agreement, which contains a list of all the subcontractors and dollar amounts of all contracts and subcontracts required for the preparation of work described in this Agreement.
- 1.1.3 Visit and carefully examine the location of the project as often as necessary to become acquainted with all conditions which are visible or could reasonably be discovered, and which might have an impact upon the construction of the project.
- 1.1.4 Design, prepare and submit to the Water Utilities Director, plans and specifications for the construction of the project as described in the Scope of Work, and in the time and manner set forth in this Agreement.
- 1.1.5 Prepare and submit to the Water Utilities Director, concurrently with the design plans, the following:
 - a. A written estimate of probable construction costs.
 - b. A written list of submittals, which the construction contractor will be required to provide during the construction phase of the project.
- 1.1.6 Upon completion of construction, prepare, approve and sign a set of As-Built record drawings.
- 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.

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- 1.2.3 Provide sample of title block for the plans and standard form Public Works Construction Contract Documents to be used with the General Provisions (Specifications).
- 1.2.4 Upon request, verify the location of existing CITY owned utilities.
- 1.2.5 Provide all legal advertising mailings and postings required.
- 1.2.6 Duplicate all final plans and specifications.
- 1.2.7 Provide all necessary surveying and testing required for design, including geotechnical engineering services if required during construction.
- 1.2.8 Provide overall project management.
- 1.2.9 Provide coordination of all inquiries from prospective bidders during the bidding period.

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 2.7. 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, complete and deliver a copy of the Mitigated Negative Declaration, Permits and Site Selection to the Water Utilities Director within 120 calendar days of the execution of this Agreement.
- 2.3 Phase II. CONSULTANT shall prepare and deliver a copy of the Well Design and complete Construction Phase I to the Water Utilities Director within 80 calendar days of the execution of this Agreement. No work shall be performed by CONSULTANT beyond the Phase II stage until the Water Utilities Director has given authorization to perform Phase III.
- 2.4 Phase III. CONSULTANT shall prepare and deliver the Well Design and complete Construction Phase II to the Water Utilities Director within 60 calendar days of the Water Utilities Director's written authorization to perform Phase III.

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- 2.5 Phase IV. CONSULTANT shall start and complete the Pilot Studies and provide copies of the reports to the Water Utilities Director within 425 calendar days of the Water Utilities Director's authorization to perform Phase IV.
- 2.6 Phase V. CONSULTANT shall start and complete the Alignment Study and Feasibility Report and provide copies of the reports to the Water Utilities Director within 425 calendar days of the Water Utilities Director's authorization to perform Phase V.
- 2.7 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.
- 2.8 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 **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.

All plans shall be ink drawn on standard mylar sheets available from the CITY at no cost to CONSULTANT. 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 Water Utilities Director. 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 Water Utilities Director. CONSULTANT shall be solely responsible for the performance of any of its employees, agents or subcontractors under this agreement.

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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 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

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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 CONSULTANT under this Agreement.

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

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considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.

- 7.8 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.

- 8.0 **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million dollars (\$1,000,000).

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

- 9.0 **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims 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 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 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.

- 11.0 **NO CONFLICT OF INTEREST.** The CONSULTANT shall not be financially interested in any other CITY contract for this project. For the limited purposes of interpreting this section, the CONSULTANT shall be deemed a "City officer or employee", and this Section shall be interpreted in accordance with Government Code section 1090. In the event that the CONSULTANT becomes financially interested in any other CITY contract for this project, that other contract shall be void. The CONSULTANT shall indemnify and hold harmless the CITY, under Section 9 above, for any claims for damages resulting from the CONSULTANT'S violation of this Section.
- 12.0 **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and other documents, prepared or provided by the CONSULTANT under this Agreement shall be the property of the CITY. The CITY agrees to hold the CONSULTANT free and harmless from any claim arising from any use, other than the purpose intended, of the plans and specifications and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computation and other documents, prepared or provided by the CONSULTANT. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting their participation in this project.
- 13.0 **COMPENSATION.**
- 13.1 For work performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT in accordance with the schedule of billing rates set forth in Exhibit "A", attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this Agreement without prior written approval of the Water Utilities Director. CONSULTANT'S compensation for all work performed in accordance with this Agreement shall not exceed the total contract price of \$ 1,231,000.

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

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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 Prior to the submission of the completed Mitigated Negative Declaration, Permits and Site Selection, partial payments shall not exceed \$84,100.
 - 13.4.2 Prior to the submission of the completed Well Design and Construction Phase I, partial payments shall not exceed \$277,500.
 - 13.4.3 Prior to the submission of the completed Well Design and Construction Phase II, partial payments shall not exceed \$612,800.
 - 13.4.4 Prior to the submission of the completed Pilot Studies and Reports, partial payment shall not exceed \$1,101,500.
 - 13.4.5 Prior to the submission of the completed Alignment Study and Feasibility Report, partial payment shall not exceed \$1,231,000.
- 14.0 **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party.

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

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19.0 DISPUTE RESOLUTION.

- a. Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be first submitted to mediation, the cost of which shall be borne equally by the parties.
- b. No suit shall be brought on this contract unless all statutory claims filing requirements have been met.

20. **NOTICES.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

TO CITY:

Lonnie Thibodeaux
Interim Water Utilities Director
300 North Coast Highway
Oceanside, CA 92054

TO CONSULTANT:

Tetra Tech, Inc.
2141 El Camino Real, Suite J
Oceanside, CA 92054

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

- a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or
- b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

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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:

Oceanside Seawater Desalination Pilot Facility and Feasibility Study - 715-858247

TETRA TECH, INC.

CITY OF OCEANSIDE

By: 
Name/Title DIV. SR. Vice President

By: _____
Peter A. Weiss, Interim City Manager

By: 
Name/Title DIV. SR. Vice President

APPROVED AS TO FORM:

95-4148514
Employer ID No.


City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

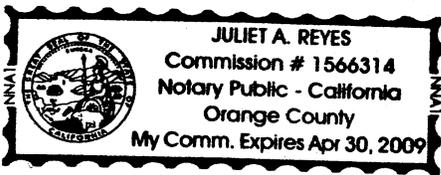
County of ORANGE } ss.

On Dec 7, 2006, before me, Juliet A. Reyes, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Steven D. Tedesco and
ROBERT OZIAKO
Name(s) of Signer(s)

personally known to me

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.

Juliet A. Reyes
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

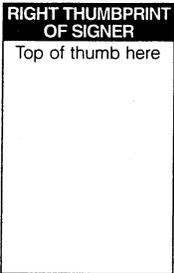
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

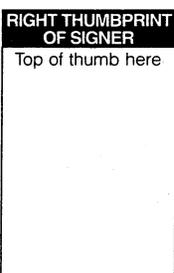
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



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: _____