

STAFF REPORT



ITEM NO. 10
CITY OF OCEANSIDE

DATE: April 15, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **APPROVAL OF AMENDMENT 1 IN THE AMOUNT OF \$129,154 TO THE PROFESSIONAL SERVICES AGREEMENT WITH INFRASTRUCTURE ENGINEERING CORPORATION FOR ADDITIONAL CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE LAND OUTFALL EMERGENCY REPLACEMENT PROJECT; AND APPROVE A BUDGET APPROPRIATION OF \$129,154 FOR AMENDMENT 1 AND \$25,000 FOR ADDITIONAL WORK THAT MAY BE REQUIRED FOR A TOTAL OF \$154,154 FROM THE AVAILABLE BALANCE IN THE WASTEWATER EXPANSION PROJECT FUND**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council approve Amendment 1 in an amount not to exceed \$129,154 to the professional services agreement with Infrastructure Engineering Corporation of Oceanside for additional construction management and inspection services for the Land Outfall Emergency Replacement project located along Oceanside Boulevard; approve a budget appropriation of \$129,154 for Amendment 1 and \$25,000 for additional work that may be required for a total of \$154,154 from the available balance in the Wastewater Expansion Project fund; and authorize the City Manager to execute the amendment (Exhibit A).

BACKGROUND

The existing land outfall was constructed in 1972 and consists of approximately 34,000 linear feet of 24-inch ductile iron pipe. Currently the land outfall's capacity is limited to 13.7 million gallons per day (MGD) with the pipeline's upper pressure limit as the limiting factor. The City recently completed the Land Outfall Alignment Study which identified the most feasible alignment and prepared 30 percent design level plans of this selected alignment.

As a result of several failures of the existing land outfall, one segment (6,200 linear feet) was identified for immediate replacement. This segment is parallel to the centerline of Oceanside Boulevard and the limits of the pipeline replacement are from approximately 1,200 feet west of Vine Street to approximately 800 feet east of Crouch Street.

Staff solicited proposals from thirteen engineering firms including all Oceanside firms. Four proposals and one letter declining participation were received. In accordance with the City's procedure, a panel was selected to evaluate the proposals. The panel unanimously recommended that the Infrastructure Engineering Corporation proposal be selected to provide the construction management and inspection services. (Exhibit B)

Infrastructure Engineering's construction management and inspection duties will be to ensure that the project is constructed according to the plans and specifications. Additional duties to be performed include day-to-day monitoring and inspection of the work; surveying; special inspections as required; preparation of daily, weekly and monthly reports; processing of proposed change orders; processing submittals and requests for information; maintenance of logs for all correspondence, submittals, requests for information and change orders; attending weekly and monthly progress meetings; and generating and submitting detailed as-built construction drawings.

ANALYSIS

The contractor has fallen behind schedule and will exceed the project deadline by several weeks. The current construction schedule provided by the contractor indicates that the project will be completed in late March 2009 but staff feels that this may be slightly aggressive and a more realistic completion date would most likely be mid-April 2009. Additional construction management and inspection services beyond the original scope will be required to facilitate the completion of this project.

FISCAL IMPACT

Funds in the amount \$129,154 for Amendment 1 and \$25,000 for additional work that may be required for a total of \$154,154 will be appropriated from the available balance in the Sewer Expansion Improvement fund (726.3351) and transferred to the Land Outfall capital improvement project budget (726.865488.5241)

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 will be met.

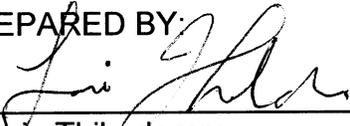
COMMISSION OR COMMITTEE REPORT

The Utilities Commission reviewed and approved staff's recommendation at its regularly scheduled meeting on March 17, 2009.

RECOMMENDATIONS

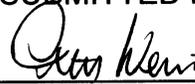
Staff and the Utilities Commission recommend that the City Council approve Amendment 1 in an amount not to exceed \$129,154 to the professional services agreement with Infrastructure Engineering Corporation of Oceanside for additional construction management and inspection services for the Land Outfall Emergency Replacement project located along Oceanside Boulevard; approve a budget appropriation of \$129,154 for Amendment 1 and \$25,000 for additional work that may be required for a total of \$154,154 from the available balance in the Wastewater Expansion Project fund; and authorize the City Manager to execute the amendment (Exhibit A).

PREPARED BY:



Lonnie Thibodeaux
Water Utilities Director

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Lonnie Thibodeaux, Water Utilities Director



Teri Ferro, Financial Services Director

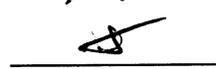


Exhibit A – Amendment 1
Exhibit B - Proposal

**CITY OF OCEANSIDE
AMENDMENT 1 TO
PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: LAND OUTFALL EMERGENCY REPLACEMENT
PROJECT – CONSTRUCTION MANAGEMENT AND
INSPECTION SERVICES - 715.858246**

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(hereinafter "Amendment") is made and entered this 9th day of March 2009, by and between the City of Oceanside, Water Utilities Department, a municipal corporation, hereinafter designated as "DEPARTMENT", and INFRASTRUCTURE ENGINEERING CORPORATION of Oceanside, hereinafter designated as "CONSULTANT".

RECITALS

WHEREAS, DEPARTMENT and CONSULTANT are the parties to that certain Professional Services Agreement dated April 9, 2008, hereinafter referred to as the "Agreement", wherein CONSULTANT agreed to provide certain services to the DEPARTMENT set forth therein;

WHEREAS, the parties desire to amend the Agreement to provide for changes and/or modifications to Section 1, Scope of Work and Section 13, Compensation.

AMENDMENT

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

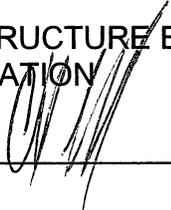
1. Section 1, Scope of Work, shall be amended to reflect and include the additional inspection and testing required as described in the proposal dated January 14, 2009.
2. Section 13, Compensation, shall be amended to reflect that all work performed in accordance with the Agreement dated April, 9, 2008, shall not exceed the total contract price of \$493,682.
3. Except as expressly set forth in the Amendment, the Agreement shall remain in full force and effect and is hereby ratified and reaffirmed.

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 Agreement on behalf of the respective legal entities of the CONSULTANT and the DEPARTMENT.

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 9th day of March, 2009.

INFRASTRUCTURE ENGINEERING CORPORATION

CITY OF OCEANSIDE

By:  _____

By: _____

Peter A. Weiss, City Manager

By: Executive Vice President

APPROVED AS TO FORM:

01-0617154

Employer ID No.



City Attorney

NOTARY ACKNOWLEDGEMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO }

On MARCH 9, 2009 before me, NANCY M. CARLISLE, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

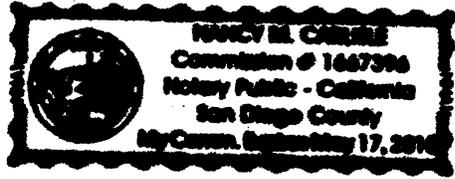
personally appeared AMY R. CZAJKOWSKI
Name(s) of Signer(s)

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 Nancy M. Carlisle
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: _____

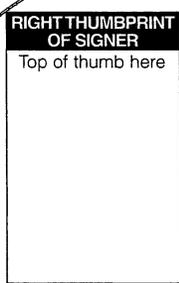
Signer(s) Other Than Named Above: _____

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: _____



January 14, 2009

Mr. Jason Dafforn, Project Manager
 City of Oceanside
 Water Utilities Dept
 300 N. Coast Highway
 Oceanside, California 92054

Reference: Land Outfall Emergency Replacement Project – Construction Management and Inspection Services (715.858246) Additional Requested Budget

Dear Mr. Dafforn,

As you are aware the CM budget for the above referenced project will be exceeded in the following month. The reasons for going over budget are as follows:

The original contract completion date is February 23, 2009, and the Contractor's latest project schedule shows the completion date as March 30, 2009. Even this completion date is aggressive and therefore, a more likely completion date is April 13, 2009 (i.e. two additional weeks from ARB's new completion date). Therefore, this delay would put the Contractor approximately 50 calendar days over the contract Completion date. If Liquidated Damages (per Section 7.24 – Liquidated Damages of the General Provisions) are assessed the amount recovered would be approximately \$75,000.

In addition, the Contractor mobilized and started the preconstruction phase on May 19, 2008 (issuance of NTP to ARB) and due to ARB not being able to complete submittals and/or permits for excavation work, the mainline work did not start until August 3, 2008.

The proposal IEC submitted was based on 7.5 months of full time construction inspection and part time construction management for a nine (9) month period. This letter is requesting additional budget just to cover the following items:

- Full time inspection for the remainder of the Contractor's extended schedule
- Part-time construction management services for the remainder of the Contractor's extended schedule (estimated at 18 hours per week versus 20 hours per week)
- Record Drawing Services (these services were a part of the CM Support services – Task 4. However, other tasks were requested such as reviewing design revisions for the hot tap connection, change order review, and answering questions regarding HDPE ovality and plug valve substitutions, etc.)

Additional soil compaction inspection services are also required due to the extended construction duration. The construction staking services only require an additional \$770 for staking the box culvert redesign.

Mr. Jason Dafforn
Page 2 of 2

I have included the attached spreadsheet which shows the original contract on the left side and the additional requested budget on the right side. The total of the above is **\$87,034**. We had an effective and efficient use of inspection and management time for the project. There have been several claims and dispute issues with the Contractor which if this had not occurred and the Contractor remained on schedule this contract would have remained within budget.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Czajkowski". The signature is written in a cursive, flowing style.

Amy Czajkowski, P.E.
Construction Manager

cc: File

City of Oceanside
Construction Management Inspection Services -
Additional Requested Budget (715.858246)

Pre Construction Activities

Original Contract Person/Title	Hours	Hourly Rate	Subtotal
Construction Manager	120	\$140.00	\$16,800.00
Inspector	160	\$108.00	\$17,280.00
Subtotal for Pre-Construction Phase			\$34,080.00

Construction Activities

Original Contract Person/Title	Hours	Hourly Rate	Subtotal
Construction Manager	600	\$140.00	\$84,000.00
Inspector	1200	\$108.00	\$129,600.00
Administrative Asst.	360	\$82.00	\$29,520.00
As-Needed Geotechnical Services			\$62,068.00
As-Needed Survey Services			\$12,780.00
Subtotal for Construction Phase			\$317,968.00

Post-Construction Activities

Original Contract Person/Title	Hours	Hourly Rate	Subtotal
Construction Manager	40	\$140.00	\$5,600.00
Inspector	60	\$108.00	\$6,480.00
Subtotal for Post Construction Phase			\$12,080.00

Total Original Contract Amount \$364,128.00

Amount of Contract per NTP \$364,528.00

Construction Activities

Additional Contract Amount Person/Title	Hours	Hourly Rate	Subtotal
Construction Manager	144	\$140.00	\$20,160.00
Inspector	320	\$108.00	\$34,560.00
Administrative Asst.	32	\$82.00	\$2,624.00
As-Needed Geotechnical Services			\$25,000.00
As-Needed Survey Services			\$690.00
Subtotal for Construction Phase			\$83,034.00

Post-Construction Activities

Additional Contract Amount - Drafting for Record Drawings Person/Title	Hours	Hourly Rate	Subtotal
Design Engineer	40	\$100.00	\$4,000.00
Subtotal for Post Construction Phase			\$4,000.00

Total Requested Additional Amount \$87,034.00

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 9th day of April, 2008, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and INFRASTRUCTURE ENGINEERING CORPORATION, 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 CONSULTANT will provide construction management, inspection, survey and materials testing services for the Land Outfall Emergency Replacement project as described in the CONSULTANT's proposal dated February 27, 2008 and attached hereto and incorporated herein as Exhibit "A". The project and scope of work is more particularly described below.
- 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

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

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 Jason Dafforn.

- 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.
- 1.1.5 Upon completion of construction, prepare, approve and sign a set of As-Built record drawings.
- 1.1.6 Provide field assistance to the City during construction periods upon request by Water Utilities Director to include the services listed below:
 - a. Provide consultation and advice to the City during construction of the project.
 - b. Review and make recommendations on all construction contract change orders and requests for clarification from the contractor.
 - c. Prepare engineering cost estimates.
 - d. Prepare needed reports and notices.
 - e. Provide all geotechnical and testing services required along with surveying for the project.
 - f. Provide periodic visits to the site to monitor construction.
 - g. Attend meetings with the Water Utilities Director or his designees.
- 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.

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

- 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.
- 1.2.4 Provide all legal advertising mailings and postings required.
- 1.2.5 Duplicate all final plans and specifications.
- 1.2.6 Provide overall project management.

2.0 TIMING REQUIREMENTS

- 2.1 Time is of the essence in the performance of work under this Agreement and the following timing requirements shall be strictly adhered to unless otherwise modified in writing as set forth in Section 2.2. Failure by CONSULTANT to strictly adhere to these timing requirements may result in termination of this Agreement by the CITY and the assessment of damages against the CONSULTANT for delays.
- 2.2 CONSULTANT shall submit all requests for extensions of time for performance in writing to the Water Utilities Director no later than ten (10) calendar days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due. The Water Utilities Director shall review all such requests and may grant reasonable time extensions for unforeseeable delays which are beyond CONSULTANT'S control.
- 2.3 For all time periods not specifically set forth herein, the CONSULTANT shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, 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.

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

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.

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.

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

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.

7.2.1 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.

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

- 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 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 direct claims or lawsuits for damages to persons or property to the extent 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

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

CITY, defend any such suit or action brought against the CITY, its officers, agents or employees resulting or arising from the tortious acts or omissions of the CONSULTANT.

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

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

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

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 \$364,528.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the Water Utilities Director. CONSULTANT shall obtain approval by the Water Utilities Director prior to performing any work which results in incidental expenses to CITY as set forth in Section 13.2.2.

13.2 CONSULTANT shall maintain accounting records including the following information:

13.2.1 Names and titles of employees or agents, types of work performed and times and dates of all work performed in connection with this Agreement which is billed on an hourly basis.

13.2.2 All incidental expenses including reproductions, computer printing, postage, mileage and subsistence.

13.3 CONSULTANT'S accounting records shall be made available to the Water Utilities Director for verification of billings, within a reasonable time of the Water Utilities Director's request for inspection.

13.4 CONSULTANT shall submit monthly invoices to CITY. CITY shall make partial payments to CONSULTANT not to exceed the total contract price within thirty (30) days of receipt of invoice, subject to the approval of the Water Utilities Director, and based upon the following partial payment schedule:

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.

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

15.0 **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT'S duties be delegated, without the express written consent of the CITY. Any attempt to assign or delegate this Agreement without the express written consent of the CITY shall be void and of no force or effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

17.0 **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

18.0 **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an Agreement in writing, signed by the parties hereto.

19.0 **DISPUTE RESOLUTION.**

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

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

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
Water Utilities Director
300 North Coast Highway
Oceanside, CA 92054

TO CONSULTANT:

Preston Lewis
Infrastructure Engineering Corporation
717 Pier View Way
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.

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

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:

**LAND OUTFALL EMERGENCY REPLACEMENT PROJECT -
CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - 715.858246**

INFRASTRUCTURE ENGINEERING
CORPORATION

CITY OF OCEANSIDE

By: [Signature]
Name/Title PREGO LEWIS, PRESIDENT

By: [Signature]
Peter A. Weiss, City Manager

By: [Signature]
Name/Title Robert S. Widen, Sr. Project Manager

APPROVED AS TO FORM:
[Signature]
City Attorney

01-0617154
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

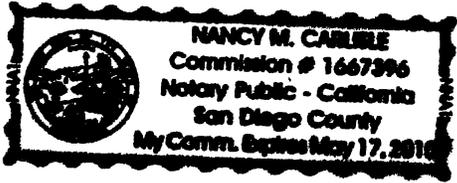
County of SAN DIEGO } ss.

On MARCH 7, 2008, before me, NANCY M. CARLISLE, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared PRESTON H. LEWIS,
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.



Place Notary Seal Above

WITNESS my hand and official seal.

Nancy M. Carlisle
Signature of Notary Public

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: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____