

STAFF REPORT*CITY OF OCEANSIDE*

DATE: April 7, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **AMENDMENT 1 IN THE AMOUNT OF \$53,693 TO THE PROFESSIONAL SERVICE AGREEMENT WITH GEOPACIFICA, INC., OF OCEANSIDE FOR ADDITIONAL ENGINEERING ANALYSIS OF LOMA ALTA CREEK DETENTION BASIN AT EL CAMINO REAL**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 in the amount of \$53,693 to the Professional Service Agreement (PSA) with Geopacifica, Inc., of Oceanside for geotechnical services for the Loma Alta Creek Detention Basin at El Camino Real project, for additional engineering services; and authorize the City Manager to execute the amendment.

BACKGROUND

The Loma Alta Creek Detention Basin at El Camino Real, which is under construction east of El Camino Real and south of Oceanside Boulevard, is one of three basins that will alleviate flooding along Loma Alta Creek. The completion of all three basins will remove the flood insurance requirements from many downstream properties.

The first basin, at the southeast corner of Mesa Drive and El Camino Real, was completed in 2006. Council awarded the construction of the second basin, at El Camino Real and Sprinter Rails, on December 16, 2009. The third basin at Rancho del Oro is anticipated to begin construction in 2011.

The City of Oceanside reimbursed North County Transit District (NCTD) for the construction of the basin walls that are parallel to the Sprinter Rail and will complete the remaining basins walls as it completes the detention basins.

On April 28, 2009, the City hired Geopacifica to provide geotechnical services for the basin walls. The original scope of services includes seepage analysis of the Garrison Creek Detention Basin and El Camino Real Detention Basin. Three consulting firms were asked to submit proposals to the original professional services agreement. They were Geocon, Inc., Stoney-Miller Consultants, Inc., and Geopacifica, Inc. The lowest responsible consultant was Geopacifica, Inc. of Oceanside with a bid of \$22,300.

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ANALYSIS

A change in the Federal Emergency Management Agency (FEMA) approach regarding seepage analysis requires that the City provide additional evaluation for the basin walls constructed by NCTD. This supplementary information is intended to specifically detail wall pressures resultant from an extreme rainfall event.

The City will request that FEMA revise the Flood Insurance Rate Map once the basins are completed.

FISCAL IMPACT

The current unencumbered balance in Loma Alta Creek Detention Basin at El Camino Real project account, 905745100520, is \$1,681,408. Sufficient funds are available to execute Amendment 1 in the amount of \$53,693.

INSURANCE REQUIREMENTS

The City's standard insurance requirements have been met and are currently in effect.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve Amendment 1 in the amount of \$53,693 to the Professional Service Agreement (PSA) with Geopacifica, Inc., of Oceanside for geotechnical services for the Loma Alta Creek Detention Basin at El Camino Real project, for additional engineering services; and authorize the City Manager to execute the amendment.

PREPARED BY:

Abraham Chen
Abraham Chen
Associate Engineer

SUBMITTED BY:

Peter A. Weiss
Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
George Buell, Development Services Director
Scott O. Smith, City Engineer
Teri Ferro, Financial Services Director

MSL
GB
SO
TF

- Exhibit A-PSA Amendment 1
- Exhibit B- Request for Amendment to Professional Services Agreement
- Exhibit C-Original Professional Services Agreement

CITY OF OCEANSIDE

**AMENDMENT NUMBER 1 TO
PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: AMENDMENT NUMBER 1 TO PROFESSIONAL SERVICES
AGREEMENT FOR GEOTECHNICAL SERVICES - 905745100520**

This AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT is made and entered into this _____ day of April, 2010, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Geopacifica, Incorporated, hereinafter designated as "CONSULTANT".

RECITALS

WHEREAS CITY and CONSULTANT entered into a professional services agreement to provide geotechnical services and to accept responsibility for the Sprinter Wall.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

The Professional Services Agreement shall be amended to read as follows:

- A. SECTION 1, SCOPE OF WORK, IS HEREBY AMENDED TO INCLUDE THE FOLLOWING ADDITIONAL WORK DESCRIBED HEREIN:**

The amendment expands the services to include preparation seepage analysis for the Sprinter Rail retaining wall at Loma Alta Creek.

A detailed description of the additional scope of services is contained in the Request for Amendment to Professional Services Agreement attached as Exhibit "A" incorporated herein by reference.

- B. SECTION 7, COMPENSATION, IS HEREBY AMENDED BY ADDING AN AMOUNT NOT TO EXCEED \$53,693 FOR THE ADDITIONAL WORK AS SET FORTH IN A.**

The total amount of compensation for the work required by the Professional Services Agreement, including this amendment, shall not exceed \$75,993.

- D. ALL OTHER TERMS, CONDITIONS, COVENANTS AND PROVISIONS OF THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE ORIGINAL AGREEMENT AND THIS AMENDMENT, THE TERMS OF THIS AMENDMENT SHALL CONTROL.**

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do herein agree to the performance of this Amendment.

CITY OF OCEANSIDE

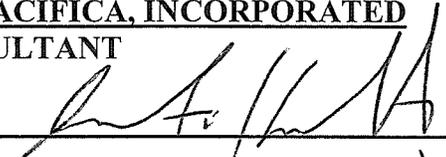
APPROVED AS TO FORM

BY: _____
PETER A. WEISS

BY:  _____ ASST.
CITY ATTORNEY

TITLE: CITY MANAGER

GEOPACIFICA, INCORPORATED
CONSULTANT

BY:  _____

NAME: James F. Knowlton

TITLE: President

ID. # 33-0207383

NOTARY ACKNOWLEDGEMENTS OF CONSULTANT MUST BE ATTACHED.

EXHIBIT

Request for Amendment to Professional Services Agreement

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 3/26/2010 before me, Vida Murrell

}
Here Insert Name and Title of the Officer

personally appeared James F. Knowlton

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 Vida Murrell
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

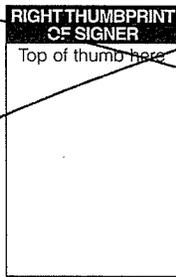
Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: PSA Amendment 1 for Geotechnical Servs.
 Document Date: _____ Number of Pages: 2
 Signer(s) Other Than Named Above: N/A

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: _____



CERTIFICATE OF SECRETARY
AS TO
CORPORATE RESOLUTION

I, James F. Knowlton, Secretary of Geopacifica, Inc., a corporation organized under the state of California, do hereby certify that the following resolution is a full, true and correct copy of a resolution of the Board of Directors of said corporation, duly and regularly adopted by the Board of Directors in conformance with applicable law and bylaws of said Corporation on the 27th day of April, 2009.

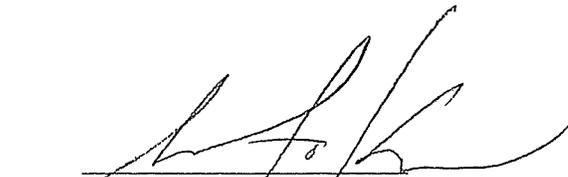
RESOLVED that James Knowlton, President

Is hereby authorized and directed to sign a Professional Services Agreement with the City of Oceanside, on behalf of, and in the name of Geopacifica, Inc. in any manner and on such terms as he may deem advisable.

Be it further resolved, that notwithstanding any change to or termination of the foregoing authority by operation of law or otherwise, any originator of such loan or purchase agreements and any assignee thereof shall be fully protected and held harmless in relying and acting upon said authorization until they have received written notice from the Corporation of any such change or termination.

I hereby certify that said resolution has not been amended or revoked and is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my name as Secretary and affixed the seal of said Corporation, this 27th day of April, 2009


James F. Knowlton
President/Secretary

Geopacifica, Inc.

To: Abe Chen, Engineering, CIP
From: James Knowlton, Geotechnical Consultant
Date: 3/23/2009
Re: Proposal to Perform Geotechnical Services, Accept Design and construction of Existing Floodwall along Loma Alta Creek at El Camino Real and Perform Slope Stability Calculations to enable the Walls to Conform to FEMA Requirements, Oceanside, CA

In accordance with your request I am presenting this proposal to perform geotechnical services in order to accept the existing floodwall on the south side of Loma Alta Creek, east of El Camino Real. This wall was designed by Simon Wong Engineering (utilizing plans prepared by Rick Engineering) for NCTD and constructed by a contractor hired by NCTD for the construction of the Sprinter Line. Although a preliminary geotechnical report with preliminary design parameters was prepared by this firm for the City of Oceanside, Simon Wong did not retain or consult with this firm in the preparation of the construction plans or were we retained or consulted during the construction of the wall. Additional analysis of the wall design pertaining to seepage has been performed by Terra Costa Consultants. However, the subject project does not have a geotechnical engineer of record. In able to accept the subject project(already constructed) and become geotechnical engineer of record and satisfy myself that the project is safe and stable and able to perform its intended function I propose the following work:

1. Review the grading and construction plans prepared by Simon Wong Engineering.
2. Review the structural design calculations and supporting data prepared by Simon Wong engineering.
3. Review all in-house files and reports prepared by this firm (Geopacifica) for the preliminary investigation for detention basins at Garrison Creek, Loma Alta Creek at El Camino Real and Rancho Del Oro.
4. Review geotechnical report by Geocon, Inc. for additional floodwall at Loma Alta Creek and any additional reports prepared by that firm.
5. Review the Seepage Analysis report for the Loma Alta Creek Floodwall prepared by Terra Costa Consultants.
6. Evaluate the need for any additional subsurface exploration and soil sampling at the subject site.
7. Draw cross-sections at appropriate locations perpendicular to Loma Alta Creek and through the existing floodwall for slope stability calculations utilizing available topography supplemented by field measurements.
8. Perform slope stability calculations for the existing floodwall.

9. Perform a geotechnical report, presenting the results of my review, findings and analyses that would be acceptable for FEMA approval, providing the findings are favorable and no remediation is necessary.
10. Prepare a letter of assumption of responsibility as geotechnical engineer of record for the wall.

The following are my cost estimate for the work described in items 1-10 above:

Geotechnical Review of existing Plans, reports and calculations

64 hours @ \$100/hr = \$6400.00

Field evaluation, Map Preparation, Cross-Section Preparation

30 hours @ \$100/hr = \$3000.00

Slope Stability Analysis, Report Preparation

85 hours @ \$100/hr = \$8500.00

Typing, Report publication

40 hours @ \$45/hr = \$1800.00

Subsurface Investigation = two borings, two test pits = \$2600.00

I anticipate that to perform the work and investigation necessary to accept the existing floodwall, write a report acceptable for FEMA and become the geotechnical engineer of record for the floodwall project the cost would be \$22,300.00.

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: Loma Alta Creek Detention Basin at El Camino Real – 520.817451

THIS AGREEMENT, dated APRIL 28, 2009, for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Geopacifica, Incorporated, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows:
Provide geotechnical services and to accept responsibility for the Sprinter Wall near the Sprinter Rail and El Camino Real, in the City of Oceanside, California. For more detail, see Exhibit "A". \$ 22,300
2. **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 City Engineer. 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 City Engineer. 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.
3. **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 this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial

Loma Alta Creek Detention Basin at El Camino Real – 520.817451

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.

4.2 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 aggregate	\$ 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.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the 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.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as

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A-X or higher by A.M. Best.

- 4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **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 (\$1,000,000.00).

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

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of CONSULTANT'S work, including the negligent acts, errors or 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, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether

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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 founded upon, resulting or arising from the conduct, 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.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$22,300.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the City Engineer. CONSULTANT shall obtain approval by the City Engineer prior to performing any work, which results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the Engineer within 60 days from authorization to begin work by the City.

9. **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.

10. **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.

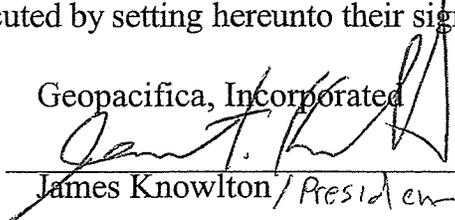
11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

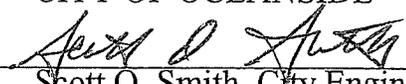
12. **SIGNATURES.** The individuals executing this Agreement represent and warrant

Loma Alta Creek Detention Basin at El Camino Real – 520.817451

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 set forth below.

Geopacifica, Incorporated
By: 
James Knowlton / President

CITY OF OCEANSIDE
By: 
Scott O. Smith, City Engineer

Date: _____

Date: 4-29-09

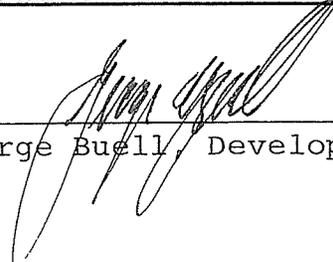
By: _____
Name/Title

APPROVED AS TO FORM:


Date: _____
33-0267383
Employer ID No.

City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.


George Buell, Development Services Director

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

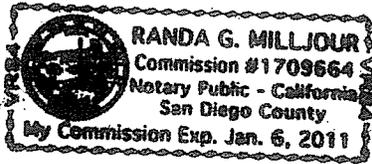
On 4/9/09 before me, RANDA G. MILLJOUR, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared JAMES F. KNOWLTON
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.



Place Notary Seal Above

Signature Randa G. Milljour
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: _____

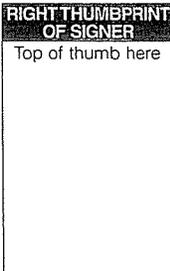
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

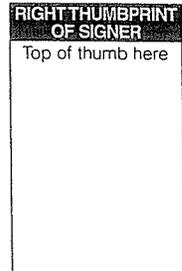
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



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: _____