

STAFF REPORT



ITEM NO. 10
CITY OF OCEANSIDE

DATE: July 11, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF AMENDMENT 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH INFRASTRUCTURE ENGINEERING CORPORATION, FOR THE LIBBY LAKE DRAINAGE PUMPS**

SYNOPSIS

Staff recommends that the City Council approve Amendment 2 in the amount of \$20,220 to the Professional Services Agreement with Infrastructure Engineering Corporation of Oceanside for design services for the Libby Lake Drainage Pumps and Pump House project, to add submittal review and responses to Requests for Information for the project, and authorize the City Manager to execute the amendment.

BACKGROUND

On December 15, 2004, the City Council awarded a Professional Services Agreement (PSA) to Infrastructure Engineering Corporation (IEC) in the amount of \$59,280 for the design of the Libby Lake Drainage Pumps and Pump House. Bids on the completed Plans, Specifications & Estimate were received and opened on January 12, 2006. As the bids exceeded the funds available the City Council rejected all bids and requested that the project be redesigned and re-bid. Amendment 1 in the amount of \$9,996 to IEC's PSA addressed the effort required to revise the designs and prepare for the re-bid. On December 14, 2006, bids were received and opened. On January 17, 2007, City Council awarded a construction contract in the amount of \$368,380 to NEWest Construction.

ANALYSIS

On April 11, 2006, City staff administratively approved an agreement with IEC, for the review of submittals. City staff restricted the total fee to less than \$5,000. As time progressed, there were substantially more submittals and requirements for re-submittals than originally anticipated. Further, there were several well-thought-out Requests for Information (RFIs) which required the expertise of the design engineer. When it became apparent that the costs for submittal review and responding to RFIs would exceed the original estimate, staff initiated Amendment 2 in the amount of \$20,220 to the original, December 2004, PSA, for submittal reviews and responses to RFIs during construction.

FISCAL IMPACT

The Capital Improvement Program (CIP) budget shows \$268,939 in new funds approved for FY 06-07 and \$170,873 in carry forward funds for a total of \$439,812 available in account number 514.815391. The construction contract including Change Order 1 in the amount of \$467 amounts to \$368,847. Other during-construction services including material testing in the amount of \$11,114, survey in the amount of \$2,510 and this Amendment 2 in the amount of \$20,220 bring the total projected expenses to \$402,691. Therefore, sufficient funds are available.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

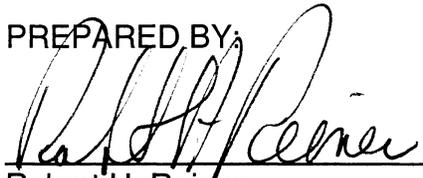
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

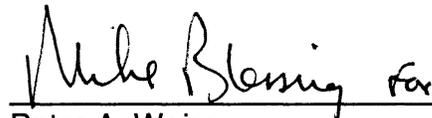
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PREPARED BY:



Robert H. Reinen
Associate Engineer

SUBMITTED BY:



Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Joseph Arranaga, Acting Deputy Public Works Director

Scott O. Smith, City Engineer

Paul Bussey, Interim Financial Services Director



**CITY OF OCEANSIDE
AMENDMENT 2 TO
PROFESSIONAL SERVICES AGREEMENT**

PROJECT: LIBBY LAKE PUMP HOUSE – 514.815391

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

RECITALS

WHEREAS, CITY and CONSULTANT are the parties to that certain Professional Services Agreement dated December 15, 2004 and Amendment 1 thereto dated June 8, 2006, hereinafter collectively referred to as the "Agreement", wherein CONSULTANT agreed to provide certain design services to the CITY as set forth therein with respect to the Libby Lake Pump House project ("Project").

WHEREAS, CITY needs the expertise and continuity of the design CONSULTANT reviewing submittals and responding to additional Requests for Information (RFIs) regarding the Project; and

WHEREAS, the parties wish to amend the Agreement to expand CONSULTANT's scope of work and compensation accordingly.

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**, is hereby amended to include the following additional work described herein:

SUBMITTAL REVIEW

CONSULTANT is to review contractor submittals/shop drawings for the project. Approximately thirty submittals and twenty re-submittals are anticipated. Submittals will be reviewed for compliance with the contract documents, stamped and returned with written comments to the contractor; submittals will be coordinated with the CITY for its

LIBBY LAKE PUMP HOUSE – 514.815391

review and input prior to returning to the contractor. Submittals will be digitized into an electronic .PDF format and stored as part of the project documentation. A submittal log will be kept to track the status of all submittals. The log will identify each submittal and re-submittal; date received; reviewer; when returned to the contractor, action required, and other pertinent information.

RESPOND TO CONTRACTOR RFI's

CONSULTANT is to respond to Contractor Requests for Information (RFI's) during the project. CONSULTANT will prepare written responses to Contractor RFI's and distribute responses to the Contractor and the City. CONSULTANT anticipates a total of eight RFI's beyond those anticipated in the original PSA.

2. SECTION 2, TIMING REQUIREMENTS, is hereby amended to provide that consultant shall have, **20 working** days from date of receipt of redline construction drawings from the contractor to complete the As-Built record drawings per Section 1.1.6 of the original Professional Services Agreement.

3. SECTION 13, COMPENSATION, is hereby amended by adding an amount of **\$20,220.00** for during construction services as set forth above, increasing the total compensation to an amount not to exceed **\$94,316.00**.

Except as expressly set forth in this 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 Amendment on behalf of the respective legal entities of the CONSULTANT and the CITY.

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

LIBBY LAKE PUMP HOUSE – 514.815391

INFRASTRUCTURE ENGINEERING
CORPORATION

CITY OF OCEANSIDE

By: *Robert S. Weber*

By: _____
Scott O. Smith, City Engineer

By: *ROBERT S. WEBER / CFO & Sr. Project Manager*
Name/Title

APPROVED AS TO FORM:

Carla D. Hamilton, ASSY.
City Attorney

Employer ID No. **01-0617154**

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

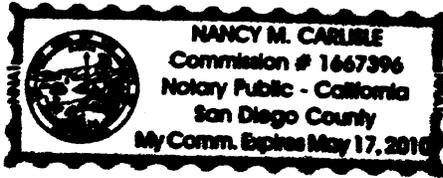
County of SAN DIEGO } ss.

On JULY 5, 2007, before me, NANCY M. CARLISLE, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared ROBERT S WEBER
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.

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: _____

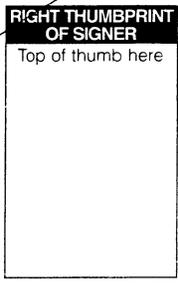
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

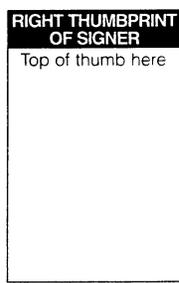
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



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: _____

LIBBY LAKE PUMP HOUSE – [501.874047]

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

Site
COPY

THIS AGREEMENT is made and entered into this 15th day of **December**, 2004, 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.** CONSULTANT will provide complete plans and specifications to:
 - a. Relocate the electrical panels and pump station controls to the storage room of the existing restroom structure.
 - b. Optimize the existing pump’s performance for discharges to the aeration creek and to the storm drain.
 - c. Replace the pump house with a masonry structure that complements the existing restroom and picnic pavilion architectural style.
- 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:
 - a. Prepare as-built drawings of the existing pump station, piping and bathroom/storage room.
 - i. Review existing record drawings of site plan and bathroom/storage room

LIBBY LAKE PUMP HOUSE – [501.874047]

- ii. Complete as built schematic during a site visit with operations staff.
 - iii. Complete as built drawings and underlying base drawing to be used for proposed improvement drawings.
- b. Prepare design for relocating the electrical panel and pump station controls to the storage room of the existing restroom structure.
- i. Prepare a conceptual design and list of issues and submit to public works staff for review and comment
 - ii. Project Engineer and Electrical Engineer meet with City staff to discuss review comments and outstanding issues. Complete meeting minutes.
 - iii. Complete 95% submittal (including plans, technical specifications and estimate) and submit for City review.
 - iv. Following receipt of the 95% review comments, complete the 100% plans, technical specifications and estimate. Submit signed mylars, 3 sets of drawings, specifications, and estimate, and submit electronic files on CD.
- c. Optimize the existing pump's performance for discharges to the aeration creek and to the storm drain.
- i. Review existing system and create head profile for existing and proposed force mains
 - ii. Review existing pump curves and create proposed head profile for each force main alignment
 - iii. Determine optimum pumping operation (in terms of cost to pump a given amount of water) by evaluating the following pump configurations:
 - 1. Existing configuration with the optimum performance of the existing pumps (speed and select proper pulleys to provide the optimum pump speed for each system)
 - 2. One – 4" aeration pump that may serve as a flood pump and 1 – 6" flood pump which can provide aeration as necessary.
 - 3. Two – 4" aeration pumps that may serve as flood pumps and 1 – 6" flood pump that can provide aeration as necessary.
 - 4. Three – 4" pumps that may be used individually or in combination for aeration or flood pumping.
 - iv. Present recommendations to City staff.
 - v. Based on the selected alternative, create conceptual plans, preliminary estimate, and a list of issues for force main, pump manifold, and pulley reconfiguration improvements.
 - vi. Submit conceptual plans for review.
 - vii. Meet with City staff to discuss review comments and outstanding issues. Complete meeting minutes.

LIBBY LAKE PUMP HOUSE – [501.874047]

- viii. Following meeting, complete 95% submittal including plans, technical specifications and estimate and submit for City review.
 - ix. Following receipt of the 95% review comments, complete the 100% plans, technical specifications and estimate.
 - x. Submit signed mylars, 3 sets of drawings, specifications, and estimate, and submit electronic files on CD.
- d. Prepare plans and specifications for a pump house replacement with either a masonry structure that will complement the existing restroom and picnic pavilion architectural style.
- i. Coordinate and subcontract for Structural Engineering and Electrical Engineering services.
 - ii. Outline space configuration for new structure.
 - iii. Submit conceptual design of pump station along with a list of issues.
 - iv. Meet with City staff to discuss review comments and outstanding issues. Complete meeting minutes.
 - v. Following receipt of City comments, complete 95% submittal including plans, technical specifications, estimate, and submit for City review.
 - vi. Following receipt of the 95% review comments, complete the 100% plans, technical specifications and estimate.
 - vii. Submit signed mylars, 3 sets of drawings, specifications, and estimate, and submit electronic files on CD.
- e. Bidding, Construction Phase and As-Built services
- i. Provide office and field Assistance during bidding and construction phase – assume four RFIs at two hours of CONSULTANT project manager’s time per RFI, and 7 hours of additional bidding and construction manager services as requested.
 - ii. Complete As-Built drawings as outlined in 1.1.6 below.
- f. The following items are not included in the CONSULTANT’S scope of services:
- i. Designing a small dike in the existing drainage swale at Lustrosos Street
 - ii. Environmental studies and permits
 - iii. Construction surveying services
 - iv. Presentations for public meetings
- 1.1.1 Work closely with the City Engineer 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 City Engineer, under the authority of the City Manager, shall be the CITY’S authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The City Engineer may delegate authority in connection with this Agreement to the City Engineer’s designees. For the purposes of directing the CONSULTANT’S performance in accordance with this Agreement, the City Engineer

LIBBY LAKE PUMP HOUSE – [501.874047]

delegates authority to Robert H. Reinen, Project Manager.

- 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 City Engineer, 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 City Engineer, 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.
- 1.1.7 Provide office and field assistance to the City during the bidding and construction periods upon request by City Engineer to include the services listed below:
 - a. Provide consultation and advice to the City during construction of the project.
 - b. Review and comment on detailed construction drawings, shop and erection drawings submitted by the contractor, subcontractors and suppliers for compliance with the construction contract documents.
 - c. Review and comment on laboratory, shop and mill test reports on materials and equipment.
 - d. Review and make recommendations on all construction contract change orders and requests for clarification from the contractor.
 - e. Prepare engineering cost estimates.
 - f. Prepare design changes and clarifications to the plans and specifications.
 - g. Prepare needed reports and notices.

LIBBY LAKE PUMP HOUSE – [501.874047]

- h. Provide periodic visits to the site to monitor construction.
- i. Attend meetings with the City Engineer 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.
- 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 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 2.6. Failure by CONSULTANT to strictly adhere to these timing requirements may result in termination of this Agreement by the CITY and the assessment of damages against the CONSULTANT for delays.
- 2.2 **Phase I.** CONSULTANT shall prepare and deliver a copy of the 40% preliminary design plans to the City Engineer within **100 calendar** days of the execution of this Agreement. No work shall be performed by CONSULTANT beyond the Phase I stage until the City engineer has given written approval of the preliminary design and authorization to perform Phase II.
- 2.3 **Phase II.** CONSULTANT shall prepare and deliver a copy of the 90% design plans to the City Engineer within **50 calendar days** of the City Engineer's written authorization to

LIBBY LAKE PUMP HOUSE – [501.874047]

perform Phase II. No work shall be performed by CONSULTANT beyond the Phase II stage until the City Engineer has given authorization to perform Phase III.

- 2.4 Phase III. CONSULTANT shall prepare and deliver the final design plans to the City Engineer within **20 calendar days** of the City Engineer's written authorization to perform Phase III.
- 2.5 Phase IV. CONSULTANT shall prepare and deliver the final As-Built plans for record drawings to the City Engineer within **30 calendar days** of the City engineer's written request.
- 2.6 CONSULTANT shall submit all requests for extensions of time for performance in writing to the City engineer 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 City Engineer shall review all such requests and may grant reasonable time extensions for unforeseeable delays which are beyond CONSULTANT'S control.
- 2.7 For all time periods not specifically set forth herein, the CONSULTANT shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, facsimile, hand delivery or mail.
- 3.0 **DESIGN CRITERIA AND STANDARDS.** All work shall be performed in accordance with applicable CITY, state and federal codes and criteria. In the 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 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.

- 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 City Engineer.

LIBBY LAKE PUMP HOUSE – [501.874047]

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.

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

Comprehensive General Liability Insurance
(bodily injury and property damage)

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

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.

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

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

LIBBY LAKE PUMP HOUSE – [501.874047]

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, 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 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

LIBBY LAKE PUMP HOUSE – [501.874047]

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 City Engineer 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 rate changes shall be made during the term of this Agreement without prior written approval of the City Engineer. CONSULTANT'S compensation for all work performed in accordance with this Agreement shall not exceed the total contract price of **\$64,100.00.**

LIBBY LAKE PUMP HOUSE – [501.874047]

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 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 City Engineer for verification of billings, within a reasonable time of the City Engineer'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 City engineer, and based upon the following partial payment schedule:
- 13.4.1 Prior to submittal of the 40% preliminary design plans, partial payments shall not exceed \$40,000.00.
- 13.4.2 Prior to CITY approval of the plans and specifications, partial payments shall not exceed \$59,000.00.
- 13.4.3 Final payment shall be made to CONSULTANT upon CONSULTANT's preparation of As-Built plans for record drawings to the satisfaction of the City Engineer.
- 14.0 **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement, in accordance with Section 13. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

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

LIBBY LAKE PUMP HOUSE – [501.874047]

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 **CLAIMS.**

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

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

TO CITY:

City of Oceanside
City Engineer
300 North Coast Highway
Oceanside, CA 92054

TO CONSULTANT:

Mr. Tom Frank
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

LIBBY LAKE PUMP HOUSE – [501.874047]

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.

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:

INFRASTRUCTURE ENGINEERING CORPORATION

CITY OF OCEANSIDE

By: Tom Franki
Name/Title SENIOR PROJECT MANAGER
Tom Franki

By: Steven R. Jepsen
Steven R. Jepsen, City Manager

By: _____
Name/Title

APPROVED AS TO FORM:
Subramanian Hon. DEPUTY
City Attorney

01-0617154
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

INFRASTRUCTURE ENGINEERING CORPORATION

JULY 2004

HOURLY CHARGE RATE AND EXPENSE REIMBURSEMENT SCHEDULE

Professional

Engineering Intern/Technician.....	\$ 40.00
Designer/CAD Operator/Engineer I.....	\$ 82.00
Engineer II	\$ 86.00
Engineer III/Senior Designer	\$ 92.00
Project Engineer.....	\$ 120.00
Project Manager.....	\$ 140.00
Senior Project Manager.....	\$ 145.00
Principal.....	\$ 150.00

Construction

Construction Observer.....	\$ 80.00
Senior Construction Observer.....	\$ 95.00
Resident Engineer.....	\$ 120.00
Construction Manager.....	\$ 130.00

Administrative

Administrative Clerk.....	\$ 40.00
Word Processor/Admin. Support	\$ 52.00
Graphic Designer	\$ 85.00

Subconsultants will be billed at cost plus 5% unless specified otherwise in the agreement.

Reimbursable Costs

Reproduction, special photography, postage, delivery services, express mail, out-of-area telephone calls, printing, travel, parking, and any other specialty services performed by subcontractor will be billed at cost plus 5%.

Mileage will be billed at \$0.40 per mile