

# STAFF REPORT



ITEM NO. **5**

CITY OF OCEANSIDE

DATE: May 2, 2012  
TO: Honorable Mayor and City Councilmembers  
FROM: Water Utilities Department  
SUBJECT: **APPROVAL OF A PROFESSIONAL CONTRACTOR SERVICES AGREEMENT WITH DOHERTY CONCRETE FOR REPAIRS TO THE CONCRETE SLAB, ASPHALT AND SLOPE AT THE WIRE MOUNTAIN RESERVOIR**

## **SYNOPSIS**

Staff recommends that the City Council approve a professional contractor services agreement with Doherty Concrete of Oceanside in an amount not to exceed \$28,007 for repairs to the concrete slab, asphalt and slope at Wire Mountain Reservoir located at 702 Airport Road; and authorization for the City Manager to execute the agreement.

## **BACKGROUND**

The Wire Mountain reservoir had a minor failure of a slope at the metering vault. This failure has caused significant damage to a concrete slab, electrical conduit, wiring and the adjacent asphalt. Staff consulted with Geopacifica to perform a site analysis of the damage and based on the report's recommendations, staff issued a request for proposals for the repairs.

## **ANALYSIS**

In February, staff requested and received three bids for concrete and miscellaneous work for the recommended repairs at the Wire Mountain reservoir. In accordance with the City's procedure for the bidding process, staff evaluated the proposals. After a thorough review of the bid amounts, staff unanimously recommended Doherty Concrete. The bids were as follows:

<b>Supplier</b>	<b>Bid Amount</b>
Doherty Concrete	\$28,007
Hubbard Contracting	\$37,730
Southland Paving	\$40,108

This agreement is being brought forward for Council approval since the cumulative total for Doherty Concrete projects is over \$50,000.

**FISCAL IMPACT**

The FY 2011-12 adopted budget for the Miscellaneous Water Projects fund (750771712.5325) has an available balance of \$219,823. Therefore, sufficient funds are available for the project.

**CITY ATTORNEY'S ANALYSIS**

The reference 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 will be updated at its next regularly scheduled meeting on May 17, 2012.

**RECOMMENDATIONS**

Staff recommends that the City Council approve a professional contractor services agreement with Doherty Concrete of Oceanside in an amount not to exceed \$28,007 for repairs to the concrete slab, asphalt and slope at Wire Mountain Reservoir located at 702 Airport Road; and authorization for the City Manager to execute the agreement.

PREPARED BY:

  
\_\_\_\_\_  
Jason Dafforn  
Acting Administration Manager

SUBMITTED BY:

  
\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Cari Dale, Utilities Director

Teri Ferro, Financial Services Director

  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

Exhibit A:

## CITY OF OCEANSIDE

### PROFESSIONAL CONTRACTOR SERVICES AGREEMENT

**PROJECT: WIRE MOUNTAIN RESERVOIR REPAIRS - 750771712**

THIS AGREEMENT, dated \_\_\_\_\_, 2012 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and DOHERTY CONCRETE, hereinafter designated as "CONTRACTOR."

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. **SCOPE OF WORK.** The CONTRACTOR desires to perform slab, asphalt and slope repairs at the Wire Mountain Reservoir and is more particularly described in the CONTRACTOR'S proposal dated January 27, 2012, attached hereto and incorporated herein as Exhibit A.
2. **INDEPENDENT CONTRACTOR.** CONTRACTOR'S relationship to the CITY shall be that of an independent contractor. CONTRACTOR 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. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONTRACTOR 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 CONTRACTOR hereby certifies that the CONTRACTOR 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 CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
  - 4.1. CONTRACTOR shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

## WIRE MOUNTAIN RESERVOIR REPAIRS – 750771712

4.2 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR to restore the required limits. The CONTRACTOR shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONTRACTOR resulting from any of the CONTRACTOR'S work.
- 4.4 All insurance companies affording coverage to the CONTRACTOR 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 CONTRACTOR 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 A-X or higher by A.M. Best.

## WIRE MOUNTAIN RESERVOIR REPAIRS – 750771712

- 4.6 CONTRACTOR shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement 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 CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONTRACTOR shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONTRACTOR as specified in this Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.
5. **CONTRACT BONDS (for contracts exceeding \$25,000).** If the total contract price specified in Section 7 of this Agreement exceeds \$25,000, or if any amendment to this Agreement causes the total contract price to exceed \$25,000, before entering upon the performance of work, CONTRACTOR shall provide two good and sufficient bonds in the amounts listed below:
- Performance Bond in a sum not less than one hundred percent (100%) of the total contract price, to guarantee faithful and timely performance of all work, in a manner satisfactory to the CITY, and further to guarantee that all materials and workmanship will be free from original or developed defects
  - Payment Bond that meets the requirements of California Civil Code section 3248, in a sum not less than one hundred percent (100%) of the total contract price, to satisfy claims of material suppliers, mechanics and laborers employed by CONTRACTOR on the work that is the subject of this Agreement
6. **CONTRACTOR'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law, CONTRACTOR 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 the negligent acts, errors or omissions or wrongful acts or conduct of the CONTRACTOR, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for

## WIRE MOUNTAIN RESERVOIR REPAIRS – 750771712

those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONTRACTOR'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 the same proceed to judgment or not. Further, CONTRACTOR 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 conduct, tortious acts or omissions of the CONTRACTOR.

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

7. **COMPENSATION.** CONTRACTOR'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$28, 007.

No work shall be performed by CONTRACTOR in excess of the total contract price without prior written approval of the CITY. CONTRACTOR shall obtain approval by the CITY prior to performing any work that 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 CITY within thirty (30) Calendar days.

9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONTRACTOR 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 CONTRACTOR 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.

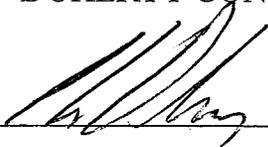
**WIRE MOUNTAIN RESERVOIR REPAIRS – 750771712**

- 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. **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 CONTRACTOR for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONTRACTOR only for work performed in accordance with the Agreement up to and including the date of termination.
- 13. **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 CONTRACTOR 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 Contractor Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

DOHERTY CONCRETE

CITY OF OCEANSIDE

By:  Owner  
Name/Title

By: \_\_\_\_\_  
Peter Weiss, City Manager

By: Charles Doherty Owner  
Name/Title

APPROVED AS TO FORM:

 4887.  
City Attorney

20 328 2012  
Employer ID No.

**NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

County of San Diego

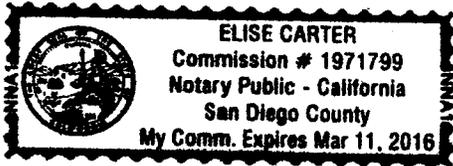
On April 13, 2012 before me,

Elise Carter, Notary Public  
Here Insert Name and Title of the Officer

personally appeared

Charles Doherty  
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.

Elise Carter  
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: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Individual

Partner —  Limited  General

Attorney in Fact

Trustee

Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

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Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Individual

Partner —  Limited  General

Attorney in Fact

Trustee

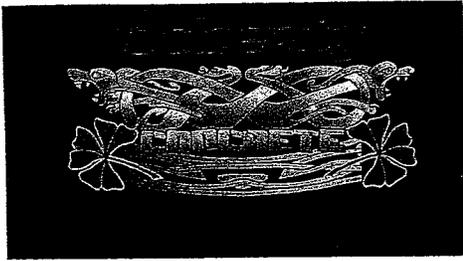
Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here



DOHERTY CONCRETE  
 General Engineering Contractor  
 1302 Crestridge Drive  
 Oceanside, CA 92054  
 (760)433-2881 (760)535-9295  
 LIC # 707928

# Proposal

Date	Proposal #
1/27/2012	163 819

Name / Address	Project
KALVIN HARRIS CITY OF OCEANSIDE WATER UTILITES DEPT	WIRE MOUNTAIN RESERVOIR REPAIRS PER GEOPACFICA/ TAYLOR GROUP RECOMENDATIONS
Description	Total
SCOPE OF WORK DEVELOPED FROM SITE MEETING WITH TAYLOR GROUP	
1. REMOVE BROKEN CONCRETE AND AC PAVEMENT APPROX. 1,985 SF 1985 SF X 1.00	1,985.00
2. REMOVE THE EXISTING FILL IN THE AREA OF DISTRESS TO NOMINAL DEPTH OF 3 FT.	600.00
3. EXCAVATE AN EXPLORATORY TRENCH ORIENTED EAST/WEST TO THE SOUTH OF SHAFT ACROSS THE AREA OF DISTRESS TO A NOMINAL DEPTH OF ABOUT 4 TO 5 FT SO THAT WE CAN LOOK AT THE CONDITION OF THE DEEPER FILL AND VERIFY THAT THE INITIAL REMOVAL DEPTH IS SUFFICIENT. IF WE ENCOUNTER BAD CONDITIONS BELOW THE INITIAL 3' REMOVAL, THEN THE CITY CAN BE NOTIFIED OF THE RESULTS AND REQUIREMENTS FOR FURTHER REMEDIAL EARTHWORK (IF ANY) CAN BE DEFINED.	750.00
4. REPLACE THE EXCAVATED SOIL AS ENGINEERED FILL TO A FINISHED GRADE ELEVATION 12" BELOW THE FINAL FINISHED SURFACE.	1,850.00
5. PLACE 6" CLASS II BASE AND 6" THICK 3250 PSI, BIG ROCK CONCRETE REINFORCED WITH #4 REBAR PLACED 12" ON CENTER BOTH WAYS, WITH PCC CURB ALONG THE SOUTH SIDE OF WHERE THE EXISTING PCC PAD IS AND SLOPE TO DRAIN TOWARDS THE GATE TO THE EAST. REMAINING SQUARE FOOTAGE TO BE 4" THICK WITH #3 BAR 18 " ON CENTER MAKE SLAB CONNECTIONS PER DETAILS	16,280.00 0.00
6. PER TAYLOR GROUP: THE SOUTHERN EDGE OF THE NEW PAD CAN BE SET BACK 12 TO 18" FROM THE TOP OF THE REBUILT SOUTH SLOPE. MIGHT WANT TO THICKEN THE EDGE OF THE SLAB, BUT PROBABLY DON'T NEED 3' PER JIM'S REPORT.	
7. FENCE REMOVAL AND REPLACEMENT (LABOR ALLOWANCE) PROVIDE TEMP FENCE	800.00
8. ESTIMATED FEES FOR GEOTECH SERVICES PRINCIPAL ENGINEER 6 HRS X 200.00 STAFF ENGINEER 8 HRS X 115.00 FIELD TECHNICIAN 20 HRS X 78.00 FIELD EQUIPMENT/MILEAGE 3 DAYS X 115.00 LAB TESTING	1,200.00 920.00 1,560.00 345.00
<b>Total</b>	

