



DATE: June 27, 2012
TO: Honorable Mayor and City Council Members
FROM: City Manager's Office/Information Technologies
SUBJECT: **PROFESSIONAL SERVICE AGREEMENT FOR THE INSTALLATION OF A GENERATOR FOR THE CIVIC CENTER**

SYNOPSIS

Staff recommends that the City Council approve a Professional Services Agreement with R.O. Straub Construction, of San Diego, in an amount not to exceed \$63,867 to build an enclosure, install electric power, install a new generator to support essential communications and computer systems in the event of a power outage and/or major disaster; and authorize the City Manager to execute the agreement.

BACKGROUND

The City is in need of a generator to support the critical infrastructure including computer, telephone and other electronic systems at the Civic Center, in case of a power outage and/or major disaster. Currently, none of the listed systems are protected by a long term power source. The generator is designed to power only essential communications and computer systems. The generator will be located on the East side of the City Hall East building.

A separate purchase order has been issued for the generator. The generator will be paid for with 2011-12 encumbered funds.

A specifically designed enclosure is required to house the generator. There are also specific electrical requirements to ensure the data center will have the required clean power to run the computer systems and maintain a functioning telephone system.

The Public Works Department determined the standard generator that will be installed at City facilities is manufactured by Kohler Power Systems. The project specifications are based on the Kohler Power Systems product requirements.

The enclosure build and the installation of the generator will be performed with a building permit issued by the City. All work will be performed in accordance with current City building codes and inspections. A permit from the San Diego Air Pollution Control District will be obtained by City staff.

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The original Contractors Request to Bid was published on August 31, 2009. The bid process was facilitated by Ramier Architects, located in Solana Beach, California. Three contractors submitted project bids:

1. R.O Straub
2. Weeks Electric Works Inc.
3. Service Electric

Unfortunately, due to budget constraints funding for the project was re-appropriated to pay for required equipment and services.

A nine percent (9%) project change order contingency amount has been included in the project cost. The contingency funds will only be released with an authorized change order. The Chief Information Officer and/or the City Manager are authorized to release the project contingency funds.

ANALYSIS

The second Contractors Request to Bid was published on April 27, 2012. The bid process was again facilitated by Ramier Architects, located in Solana Beach, California. Three contractors submitted project bids:

<u>Contractors</u>	<u>Proposed Project Cost</u>
1. R.O. Straub	\$55,199
2. Weeks Electric Works Inc.	\$68,433
3. Service Electric	\$72,500

Two of the vendors' proposals did not meet the necessary criteria either due to cost or an inability to meet City requirements. R.O. Straub was chosen based on having the most competitive pricing.

The Professional Services Agreement (PSA) will include the Construction Statement of Work from the Contractors Request to Bid. The PSA will be executed prior to the start of any project work.

FISCAL IMPACT

Total cost of the project is \$63,867 (includes a project contingency). Public Works Building Maintenance is funding the project. The available funds are in account number 630603851.5320.

COMMISSION OR COMMITTEE REPORT

Not applicable.

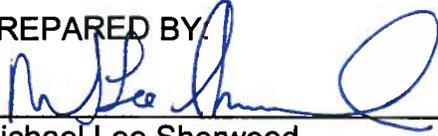
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve a Professional Services Agreement with R.O. Straub Construction, of San Diego, in an amount not to exceed \$63,867 to build an enclosure, install electric power and install a new generator to support essential communications and computer systems in the event of a power outage and/or major disaster; and authorize the City Manager to execute the agreement.

PREPARED BY:



Michael Lee Sherwood
Chief Information Officer

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle-Skaggs Lawrence, Deputy City Manager
Teri Ferro, Financial Services Director



CITY OF OCEANSIDE

PROFESSIONAL CONTRACTOR SERVICES AGREEMENT

PROJECT: City Hall East – Installation of I.T. Emergency Generator

THIS AGREEMENT, dated June 27, 2012 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and R.O. Straub Construction, hereinafter designated as "CONTRACTOR."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** Build a specifically designed enclosure (according to project architectural drawings), to house a generator purchased by the CITY. CONTRACTOR must adhere to all project related structural, engineering and electrical drawings. The CONTRACTOR is also required to install the generator, in compliance with the awarded Contractors Request for Proposal – City of Oceanside City Hall East I.T. Emergency Generator. The Scope of Work, project timeline and the associated project payment schedule is more specifically detailed in the attached 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

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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.

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

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state or be rated as A-X or higher by A.M. Best.

- 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 8 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

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CONTRACTOR, 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. 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. **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and other documents, prepared or provided by the CONTRACTOR under this Agreement shall be the property of the CITY. The CITY agrees to hold the CONTRACTOR 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 CONTRACTOR. CONTRACTOR may retain a copy of all material produced under this Agreement for the purpose of documenting CONTRACTORs participation in this project.

8. **COMPENSATION.** CONTRACTOR'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$57,199.00. The incremental contract payment schedule is based on the approved completion of each phase of the project. All payments to the contractor will be made within 30 days of the approved completion of each project phase. The project payment schedule is more specifically outlined in the attached Exhibit A.

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 result in incidental expenses to CITY.

9. **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 as outlined in the attached Exhibit A.

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10. **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.
11. **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.

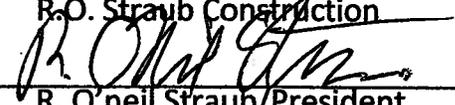
12. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
13. **TERMINATION OF AGREEMENT.** Upon five (5) days' written notice to the CONTRACTOR, the CITY may, without cause and without prejudice to any other of the CITY's rights or remedies, terminate this Agreement. Upon the service of a notice of termination, the CONTRACTOR shall discontinue the work in the manner, sequence, and at such times as directed by the CITY's project manager. The CONTRACTOR shall remain responsible for the quality and fitness of the work performed by the CONTRACTOR before termination of the Agreement. All requirements of the Agreement pertaining to work completed or to be completed as of the time of termination shall survive the termination, including without limitation all indemnities, warranties, requirements for preparation of record drawings and completion of any "punch list" items directed by the CITY's project manager.

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. Notwithstanding the foregoing, the CONTRACTOR shall not be entitled to recover any loss of anticipated profit or revenue or other economic loss arising out of or resulting from the termination, including without limitation any claim for anticipated profits on the work not performed or lost business opportunity.

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14. 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.

By: <u>R. O. Straub Construction</u>  R. O'Neil Straub/President	6-13-12	CITY OF OCEANSIDE
By: _____ Name/Title		By: _____ Peter A. Weiss/City Manager
By: _____ 568-55-4179 Employer ID No.		APPROVED AS TO FORM: _____ John Mullen/City Attorney

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 6.13.2012 before me, ALEJANDRA ADRA (Notary Public)
Date Here Insert Name and Title of the Officer

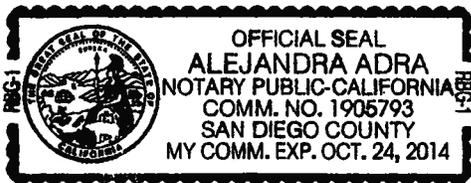
personally appeared R. O'NEIL STRAUB
Name(s) of Signer(s)

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 Alejandra Adra
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

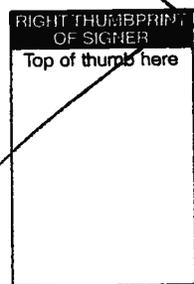
Title or Type of Document: PROFESSIONAL CONTRACTOR SERV. AGREEMENT

Document Date: 6.13.12 Number of Pages: 6

Signer(s) Other Than Named Above: K.O.S.

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: _____

**EXHIBIT A
STATEMENT OF WORK
GENERATOR INSTALLATION**

Line #	Construction Tasks	Project Timeline	Payment Schedule
1	Ensure the building permit, electrical permit and the San Diego Air Pollution Control District (SDAPCD) permit have been issued prior to beginning any work.	Week 1	30% of the contract price paid to purchase project materials - \$17,160
2	Establish job site safety notices, safety fencing, and ensure environmental debris run-off barriers are in place. Ensure jobsite is cleaned of all debris, at the end of each work day.	Week 1	
3	Construction waste disposal is to be contained using best management practices for waste, and legally disposed of by Contractor.	Week 1	
4	Demolition - Remove, salvage and reinstall one side of the existing trash enclosure gate.	Week 1	
5	Build the enclosure according to the approved project plans.	Week 2	
6	Infill the window in the existing building.	Week 2	
7	Install required electrical per the electrical drawings and RFP bid details.	Week 3	
8	Fabricate the roof grill.	Week 3	
9	Install redwood blocking conduit supports at regular intervals at the roof.	Week 3	
10	Patch and finish the electrical installation area.	Week 3	
11	Successfully pass the build and electrical inspections.	Week 3	20% of the contract price paid at the successfully passed building/electrical inspection. - \$11,440
12	Patch and finished the infilled window and any other stucco damage incurred during the construction of the enclosure.	Week 4	
13	Stucco and paint enclosure and surrounding affected areas. Stucco finish and paint color are to match existing adjoining buildings. City to supply paint color.	Week 4	
14	Install the City provided gates.	Week 4	
15	Repair adjoining roadway, and curb affected by the construction.	Week 5	
16	Repair/restore the landscaping appearance to its original condition prior to the start of construction.	Week 5	
17	Provide a completed panel schedule.	Week 5	
18	Provide a project walk thru for designated City staff prior at the completion of the construction project.	Week 5	
19	Successfully pass the final project building inspection.	Week 5	25% of the contract price paid at the successfully passed the final project build inspection. - \$14,300
	Generator Installation Tasks	Project Timeline	Payment Schedule
20	Off-load generator and set generator according to manufacturer specifications.	Weeks 6-9	
21	Anchor the generator.	Weeks 6-9	
22	Electrically ground the generator.	Weeks 6-9	
24	Install the roof grill	Weeks 6-9	

**EXHIBIT A
STATEMENT OF WORK
GENERATOR INSTALLATION**

Line #	Generator Installation Tasks	Project Timeline	Payment Schedule
24	Participate in the generator function test.	Weeks 6-9	
25	Make any necessary electrical corrections to ensure the generator electric power connects to the City's communication systems and runs the systems.	Weeks 6-9	
26	Successfully pass the final project inspection	Weeks 6-9	15% of the contract price paid at the successful completion of the project - \$8,580
27	10% Project Holdback released to contractor within 30 days of successful project completion.	30 days after project completion	10% of the contract price - \$5,719

R. Paul Run 6/13/12