ITEM NO. 8

STAFF REPORT

CITY OF OCEANSIDE

DATE: August 7, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Property Management

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH SOWARDS AND BROWN ENGINEERING FOR CONSTRUCTION STAKING SERVICES FOR THE EL CORAZON TEMPORARY ATHLETIC FIELDS AND ASSOCIATED IMPROVEMENTS**

SYNOPSIS

Staff recommends that the City Council approve a professional services agreement with Sowards and Brown Engineering of Encinitas, in the amount of $118,000 for construction staking services for the El Corazon temporary athletic fields and associated improvements located at El Corazon; approve a budget appropriation in the amount of $118,000 from General Capital Fund 501 Assigned El Corazon Account to the Silica Reclamation Fund Expenditure Account; and authorize the City Manager to execute the agreement.

BACKGROUND

On June 26, 2013, City Council approved a grading contract with Bonsall Petroleum Construction to grade a pad for the development of the El Corazon temporary athletic fields ("Project") located at El Corazon. The City of Oceanside ("City") anticipates the grading contract to commence mid-August.

ANALYSIS

Throughout the duration of the Project, construction staking and surveys must occur. Sowards and Brown Engineering ("Consultant") will conduct the required staking, calculation, and surveys on the property for the duration of the Project, as well as provide the survey services as necessary to process "As-Built" grading plans. The Consultant will perform office calculations in support of field survey crew, provide rough grade stakes for construction of slopes, the re-aligned road to Moody's, parking areas, walking trail, storm drain improvements and the pad for sports fields. The Consultant will work with the soils engineer, Geopacifica, Inc., to document grading activity and soil testing. Consultant will also perform pad certification survey and provide certification letter as required by the City.

FISCAL IMPACT

The $118,000 for the contract with the Consultant will be funded from the General Capital Fund 501 Assigned El Corazon account (501.3020.0189) leaving a remaining balance of $270,223.80. Staff requests approval to appropriate the funds to the (912880500501.5305.10600) account to pay for Consultant's contract.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY 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 Sowards and Brown Engineering of Encinitas, in the amount of $118,000 for construction staking services for the El Corazon temporary athletic fields and associated improvements located at El Corazon; approve a budget appropriation in the amount of $118,000 from General Capital Fund 501 Assigned El Corazon Account to the Silica Reclamation Fund Expenditure Account; and authorize the City Manager to execute the agreement.

PREPARED BY:

Curtis M. Jackson
Property Agent

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Douglas Eddow, Real Estate Manager

Michael Blazenski, Interim Financial Services Director

Attachments:

1) Professional Services Agreement

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: EL CORAZON BACKFILL CONSTRUCTION STAKING AND ENGINEERING SUPPORT SERVICES FOR SOCCER FIELD GRADING

THIS AGREEMENT, dated August 7, 2013 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and SOWARDS AND BROWN ENGINEERING, a California corporation, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows:

   CONSULTANT shall provide the CITY with the following services: construction staking and engineering support services. The specific manner in which the services are to be performed is described in Attachment "A", which is incorporated herein by reference.

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. 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 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
Automobile Liability Insurance	$ 1,000,000

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

4.6 CONSULTANT 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 CONSULTANT 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 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.** To the greatest extent allowed by law, 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 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 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 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 **One Hundred Eighteen Thousand Dollars $118,000.**

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the CITY. CONSULTANT 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 **two (2)-years**.

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. **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. 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.

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 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.

SOWARDS AND BROWN ENGINEERING	CITY OF OCEANSIDE
By: Randy R. Brown Name/Title	By: _____ City Manager
By: RANDY R. BROWN, VICE-PRES. Name/Title	APPROVED AS TO FORM:
33-0248437 Employer ID No.	_____ City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

Notarial Certificate Attached
Date July 24, 2013

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of San Diego

On July 24 2013 (Date) before me, L. Montes Notary (Here Insert Name and Title of the Officer),

personally appeared Randy R. Brown (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.

L. MONTES
Commission # 1985985
Notary Public - California
San Diego County
My Comm. Expires Aug 19, 2016

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: L. Montes Notary (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: City of Oceanside - Professional Services Agmt.

Document Date: July 24, 2013 Number of Pages: 6

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Randy R. Brown

☐ 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
on file

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

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Item #5907

Exhibit "A"

SOWARDS AND BROWN ENGINEERING

June 21, 2013

Douglas E. Eddow
City of Oceanside
Property Management Division
300 N. Coast Highway
Oceanside CA 92054

Re: Construction Staking and Engineering Support Services Proposal for El Corazon Reclamation Grading Plan
(Portion of APN: 162-082-51)

Dear Doug:

We are pleased to provide this proposal for construction staking services for the above referenced project in accordance with Grading Plans for Reclamation Plan G12-00030. We propose to provide the following services:

1. Provide ongoing engineering support to include pre-construction meeting and meetings with City inspectors to assist in resolving field-related problems.
2. Provide engineering services to revise Reclamation Grading Plan G12-00030 to reflect City determination to provide one foot of cap material over field areas in lieu of two feet per approved Grading Plan. We anticipate one redesign for each of the four borrow site areas.
3. Perform office calculations in support of field survey crew.
4. Provide survey services to establish site control.
5. Provide survey services to provide rough grade stakes for construction of slopes, re-aligned road to Moodys, reservoir, parking areas, walking trail, storm drain improvements and pad for sports fields.
6. Provide survey services to perform surveys as requested by soils engineer to document grading activity and soil testing.
7. Provide survey services to perform pad certification survey and provide certification letter as required by the City of Oceanside.
8. Provide engineering services to maintain AutoCAD file of plan changes to be used to prepare "As-Built" Grading Plans.
9. Provide survey services to perform "As-Built" survey services as necessary to prepare "As-Built" Grading Plans.
10. Provide engineering services to prepare "As-Built" Grading Plans for Reclamation Plan G12-00030 and process to approval by the City of Oceanside.

Fee: Hourly, not to exceed estimated range of $ 98,000 - $ 118,000
(without further authorization)
see attached Fee Schedule
+ reimbursable expenses

2187 NEWCASTLE AVENUE • SUITE 103 • CARDIFF BY THE SEA, CA 92007
(760) 436-8500 • FAX (760) 436-8603

Sowards and Brown Engineering Inc.

Fee Schedule

Effective June 30, 2009

Design Services:

Principal Engineer	$ 180/hour
Senior Project Engineer	$ 130/hour
Staff Engineer	$ 115/hour
Designer	$ 105/hour
Design Draftsman	$ 94/hour
Draftsman	$ 88/hour

Field Services:

Two Man Survey Crew	$ 185/hour

Special Services:

Expert Witness Consultation in connection with litigation	$ 225/hour
Appearance before Courts and/or Depositions (4 hours minimum)	$ 350/hour

Administrative Services	$ 60/hour

6/09
Feesched&ltr.FRM