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DATE: April 1, 2015

TO: Honorable Mayor and City Councilmembers

FROM: City Manager's Office

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR ADDITIONAL HARBOR DREDGING AND PLACEMENT ON THE BEACH**

### **SYNOPSIS**

Staff recommends that the City Council approve a Professional Services Agreement with Manson Construction Company of Seattle, Washington, in an amount not to exceed \$600,000 for the dredging of an additional 50,000-60,000 cubic yards of material from the Harbor mouth to be placed on the beach south of the Pier; and authorize the City Manager to execute the agreement.

### **BACKGROUND**

The US Army Corps of Engineers ("Corps") dredges the Harbor mouth on an annual basis. The dredged material is then discharged on Oceanside's beaches as a means to restore and enhance the overall beach width. The Corps issued bids in February 2013 for a three-year dredging cycle. The Corps had estimated that approximately 180,000 cubic yards of material would be available on an annual basis. That limit was also based on estimated Federal funding limits.

Given Council's priority to place additional sand on the depleted beaches, the City has partnered with the Corps to determine the feasibility of using available excess dredged material from the Harbor. The City requested that the Corps advance their pre-dredge survey to determine if there was excess that the City could utilize.

The Corps has recently completed the pre-dredge survey and there is currently 240,800 cubic yards of material available to dredge in the entrance channel of the Harbor. Therefore, excess material is available for the City's use. The Corps' contract is limited in funding availability and by its Congressional authorization limits; therefore, City funding would be necessary to place the additional material on the beach.

### **ANALYSIS**

The Corps' contract with Manson Construction provides for a unit cost of \$9.90 per cubic yard of dredged material. Since the Corps does not have the ability to issue contract change orders with outside agency funding, the City would need to contract

directly with Manson Construction for the additional material. Manson Construction has agreed to dredge the additional material at the contract unit cost. There are no additional mark ups for any other costs as they are already included in the Corps of Engineers' contract price.

The current contract includes placing the material along the North Coast Village frontage with additional material deposited by the Pier. The material by the Pier will be deposited from the north side of the Pier, in front of the Lifeguard Headquarters and extending south to the existing play equipment. The additional material paid for by the City will continue south from the play equipment approximately an additional 150 feet.

The City reserved \$650,000 for sand replenishment for the Whelan Sand Project. Unfortunately, the Whelan Sand Project encountered significant issues in both the quality and quantity of available material. With the ongoing flood control project delays, the additional material from the Harbor dredging is the City's best option.

### **FISCAL IMPACT**

The cost of the additional material is \$9.90 per cubic foot, and will not exceed a total contract price of \$600,000. The City had reserved \$650,000 for sand replenishment in the Sand Replacement Project account and approximately \$600,000 of those funds are available in Business Unit 912134200501. The cost will be charged to account 912134200501.5355.10600.

### **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 approved by the City Attorney and approved as to form.

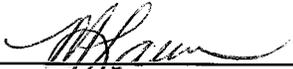
**RECOMMENDATION**

Staff recommends that the City Council approve a Professional Services Agreement with Manson Construction Company of Seattle, Washington, in an amount not to exceed \$600,000 for the dredging of an additional 50,000-60,000 cubic yards of material from the Harbor mouth to be placed on the beach south of the Pier; and authorize the City Manager to execute the agreement.

PREPARED BY:

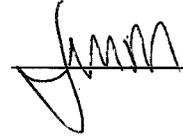
  
\_\_\_\_\_  
Peter A. Weiss  
Assistant City Manager

SUBMITTED BY:

  
\_\_\_\_\_  
Michelle Skaggs Lawrence  
Interim City Manager

REVIEWED BY:

Jane M. McPherson, Interim Financial Services Director



ATTACHMENTS: Professional Services Agreement

## CITY OF OCEANSIDE

### PROFESSIONAL CONTRACTOR SERVICES AGREEMENT

#### **PROJECT: Beach Sand Replenishment**

THIS AGREEMENT, dated March 10<sup>th</sup>, 2015 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Manson Construction Co., hereinafter designated as "CONTRACTOR."

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

1. **SCOPE OF WORK.** The project is more particularly described as follows:
  - Incidental to the work contracted by the United States Army Corps of Engineers (USACE) under contract #W912PL-13-C-0007, in compliance with the specifications issued by the USACE for said contract, and pursuant to permits issued in furtherance of said contract, dredge up to 60,000 cubic yards of material from the Oceanside Harbor Entrance Channel, Del Mar Channel, Oceanside Channel and the Advanced Maintenance Channel up to depths as shown in the plan and place the material to a +8' MLLW elevation on the beach between Pier View Way and Tyson Street by way of pumping through a pipe placed on the beach from Harbor Drive to Pier View Way. During and after deposition, the material will be sculpted and placed with bulldozers and loaders. CONTRACTOR is authorized and directed to perform the work up to 24 hours per day, 7 days per week until complete.
  - Mobilization and demobilization of CONTRACTOR's dredge plant and associated equipment shall be incidental to the work. For avoidance of doubt CONTRACTOR shall not be entitled to compensation under this Agreement for such mobilization and demobilization.
  - Notwithstanding and other provision to the contrary, CONTRACTOR in no way represents guarantees or warrants that any areas dredged or excavated will stay open, dredged or excavated for any period of time whatsoever.
  - CITY warrants by execution of this Agreement that the dredge spoils are permitted and suitable for disposal at the directed disposal site chosen by CITY and that all permits required for the Work have been issued.
  - CITY and CONTRACTOR agree that CITY is the owner and generator of the dredged materials

## Beach Sand Replenishment

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.
  
  - 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

## **Beach Sand Replenishment**

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.
- 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

## Beach Sand Replenishment

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 9554, 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.** With the exception that this Section shall in no event be construed to require indemnification by CONTRACTOR to a greater extent than permitted under the public policy of the State of California, 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 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

## Beach Sand Replenishment

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 be based on \$9.90 per cubic yard of material not to exceed the total contract price of \$600,000.

The total quantity of dredge material for which payment will be made will be determined by in-place (quantity) measurement in cubic yards. This quantity will be determined by computing the difference in available material between the pre-dredge survey and the post-dredge survey. Available material is defined as material located within the boundaries of the dredge prism. Specifically, a quantity of available material will be computed between the dredge prism and the bottom surface shown by the sounding of the USACE's pre-dredge survey, and a quantity of available material will be computed between the dredge prism and the bottom surface shown by the USACE's post-dredge survey. The difference between these two available quantities (pre & post dredge) will constitute the quantity of material dredged. The Triangulated Irregular Network (TIN) method will be used for quantity determination.

In the event of a storm event, pre & post storm event surveys will be conducted to account for potential infill. The Infill quantity will be quantified by the difference between the two surfaces as described above. This quantity will be added to the pre-dredge quantity and the final quantity removed will be computed by the difference between the modified pre-dredge quantity and the final post-dredge quantity.

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.

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 within 90 calendar days..
10. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated under-

## Beach Sand Replenishment

standing 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. Subject to the terms of this Agreement, 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.

**Beach Sand Replenishment**

**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.

MANSON CONSTRUCTION CO.	CITY OF OCEANSIDE
By: <u>James M. McNally</u> <sup>Senior</sup> <u>Vice President</u>	By: _____
Name/Title	City Manager
By: _____	APPROVED AS TO FORM:
Name/Title	<u>Joshua [Signature]</u>
_____	City Attorney
Employer ID No.	

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

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Los Angeles )

On MARCH 13, 2015 before me, Jennifer M Stuessy, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared James G. McNally  
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 Jennifer Stuessy  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended 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): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

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

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

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

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

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

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

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