

000135

COMMITTEE ACTION SHEET

100
11/6

COUNCIL DOCKET OF Nov 6, 2007

Supplemental Adoption Consent Unanimous Consent Rules Committee Consultant Review

R -

O -

First Amendment to the Agreement with Psomas for Consultant Services

Reviewed Initiated By NR&C On 9/26/07 Item No. 3c

RECOMMENDATION TO:

Approve

VOTED YEA: Fyre, Faulconer, Maienschein, Hueso

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

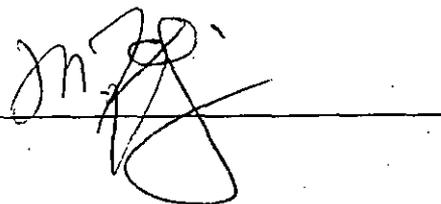
REPORT TO THE CITY COUNCIL NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Water Department's Executive Summary Sheet dated September 13, 2007; Water Department's September 26, 2007, PowerPoint

COUNCIL COMMITTEE CONSULTANT





Natural Resources and Culture Committee Meeting

Water Department

Psomas Consultant Services



September 26, 2007

10/10/07 4:11:11 PM



Rancho Bernardo Reservoir Rehabilitation

First Amendment to the
Agreement with Psomas for
Consultant Services



Project Background

- The 10 million gallon Rancho Bernardo Reservoir was originally built in 1964
- Psomas prepared rehabilitation plans for the reservoir rehabilitation.
- Recent structural shift in the reservoir created different condition to the bidding plans.
- Investigation revealed deterioration in structural condition to the reservoir roof which makes it beyond repair or rehabilitation

Description & Benefits

- The scope of work has changed, amendment to the original agreement with Psomas is required
- Replacement of the original roof is essential
- Replacement of the original reservoir roof will increase local water reliability and extend the reservoir service life for the Rancho Bernardo community
- Comply with the Department of Public Health Compliance Order # 04-14-96CO-022, Items 12 and 14

Schedule, Cost & Requested Action

- Redesign will begin in September 2007, and take approximately 3 months to complete
- Previously authorized project cost is \$390,000. The amount of this request is \$190,348, total project cost \$580,348
- Authorization of the First Amendment to the Agreement with Psomas for additional consultant services.
- Authorization of the expenditure of \$190,348 for the First Amendment to the Agreement with Psomas for additional consultant services.
- Authorize the execution of the First Amendment to the Agreement with Psomas for additional consultant services, not to exceed \$190,348

000143DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE:

100

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

October 1, 2007

11/10

SUBJECT: First Amendment to the Agreement with Psomas for Consultant Services

GENERAL CONSULTANT INFORMATION

Recommended Consultant: Psomas

Amount of this Action: \$190,348.00

Original Contract: \$390,000.00

Cumulative \$580,348.00

Funding Source: City of San Diego

SUBCONSULTANT PARTICIPATION

	<u>This Action</u>	<u>Cumulative</u>
Moraes/Pham & Associates (Asian Pacific Male/DBE)	\$ 1,050.00 00.55%	\$ 10,030.00 1.72%
Simon Wong Engineering (Asian Pacific Male/DBE)	\$136,462.00 71.69%	\$325,112.00 56.02%
Corpro Companies, Inc. (Other)	\$ 00.00 0.00%	\$ 15,855.00 2.73%
Marum & Associates (Other)	\$ 00.00 0.00%	\$ 7,800.00 1.34%
G Force (Caucasian Male/DVBE)	\$ 00.00 0.00%	\$ 5,970.00 1.02%
Genterra (Other)	\$ 00.00 0.00%	\$ 18,800.00 3.23%
Total Certified Participation	\$137,512.00 72.24%	\$341,112.00 58.77%
Total Other Participation	\$ 0.00 0.00%	\$ 42,455.00 7.31%
Total Participation	\$137,512.00 72.24%	\$383,567.00 66.08%

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Psomas submitted a Work Force Report for their San Diego employees dated August 8, 2007, indicating 42 employees in the Administrative Work Force. The Administrative Work Force Analysis indicates under representations in the following categories:

- Blacks in Technical
- Asians in A&E, Science, Computer and Technical
- Filipinos in A&E, Science, Computer
- Females in Mgmt & Financial, and Technical

An EO Plan has been requested; staff will continue to monitor.

ADDITIONAL COMMENTS

The *Work Force Analysis* is attached.

by MM-J

File: Admin WOFO 2000

Date WOFO Submitted: 8/8/2007
 Input by: chg

Goals reflect statistical labor force availability for the following: 2000 CLFA
 San Diego, CA

City of San Diego Equal Opportunity Contracting
WORK FORCE ANALYSIS REPORT

FOR
 Company: Psomas

I. TOTAL WORK FORCE:

	Black			Hispanic			Asian			American Indian			Filipino			White		Other			
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F	M	F		
Mgmt & Financial	3.3%	0	0	11.9%	0	0	8.2%	0	0	0.4%	0	0	6.2%	0	0	2	0	0	0		
Professional	4.0%	0	0	12.6%	1	0	6.5%	1	0	0.5%	0	0	6.5%	0	0	0	2	0	0		
A&E, Science, Computer	2.8%	0	0	7.3%	4	0	16.2%	0	0	0.3%	0	0	16.2%	0	1	5	5	0	0		
Technical	6.6%	0	0	14.8%	3	0	17.2%	1	0	0.4%	1	0	17.2%	0	0	10	2	0	0		
Sales	3.9%	0	0	19.5%	0	0	8.8%	0	0	0.6%	0	0	6.8%	0	0	0	0	0	0		
Administrative Support	7.0%	0	0	20.8%	0	0	8.8%	0	0	0.6%	0	0	8.8%	0	0	0	2	0	0		
Services	5.5%	0	0	36.9%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0	0	0		
Crafts	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	0	0		
Operative Workers	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0	0		
Transportation	8.1%	0	0	32.1%	0	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0	0	0		
Laborers	4.4%	0	0	54.0%	0	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	0	0	0	0		
TOTAL		1	0		8	0		3	0		1	0		0	1		17	11		0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial
 Professional
 A&E, Science, Computer
 Technical
 Sales
 Administrative Support
 Services
 Crafts
 Operative Workers
 Transportation
 Laborers

TOTAL EMPLOYEES			Female Goals
ALL	M	F	
3	3	0	39.8%
4	2	2	59.5%
16	10	6	22.3%
17	15	2	49.0%
0	0	0	49.4%
2	0	2	73.2%
0	0	0	62.3%
0	0	0	8.6%
0	0	0	36.7%
0	0	0	15.2%
0	0	0	11.1%
TOTAL	42	30	12

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.10	0	N/A	0.36	0	N/A	0.19	1	N/A	0.01	0	N/A	0.19	0	N/A	1.19	0	(1.19)
Professional	0.16	0	N/A	0.50	1	N/A	0.26	1	N/A	0.02	0	N/A	0.26	0	N/A	2.38	2	N/A
A&E, Science, Computer	0.45	0	N/A	1.17	4	2.83	2.59	0	(2.59)	0.05	0	N/A	2.59	1	(1.59)	3.57	6	2.43
Technical	1.12	0	(1.12)	2.52	3	N/A	2.92	1	(1.92)	0.07	1	N/A	2.92	0	(2.92)	8.33	2	(6.33)
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support	0.14	0	N/A	0.42	0	N/A	0.18	0	N/A	0.01	0	N/A	0.18	0	N/A	1.46	2	N/A
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Laborers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

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11/10

000145

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ON
2800293

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):
WATER DEPARTMENT

3. DATE:
September 28, 2007

4. SUBJECT:
First Amendment to the Agreement with Psomas for Consultant Services

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)
Alex Ruiz / George Freiha

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)
533-6692 / (619) 533-7449

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	41500	9. ADDITIONAL INFORMATION / ESTIMATED COST:	
DEPT.	760	In House:	\$3,909,614.00
ORGANIZATION	391020	Engineering:	\$ 580,348.00
OBJECT ACCOUNT	4118	Construction:	\$4,156,444.00
JOB ORDER	185692	City Forces:	\$ 125,000.00
C.I.P. NUMBER	73-328.0	Contingency:	\$ 207,828.00
AMOUNT	\$190,348	Total Project:	\$8,979,234.00
		Less Prev Auth	\$8,979,234.00
		This Request	\$ 0.00

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	WATER	<i>[Signature]</i>	10-20-07	7	DEPUTY CHIEF	<i>[Signature]</i>	10-18-07
2	E.A.S.	<i>[Signature]</i>	10-1-07	8	C.O.O.	<i>[Signature]</i>	10-18-07
3	EOCP	<i>[Signature]</i>	10-1-07	9	CITY ATTORNEY	<i>[Signature]</i>	10-27-07
4	DOCKET LIAISON	<i>[Signature]</i>	10/4/07	10	ORIG. DEPT	<i>[Signature]</i>	10/24/07
5	FM/CIP	<i>[Signature]</i>	10/12/07				
6	AUDITOR	<i>[Signature]</i>	10/15/07				
	Debt Management	<i>[Signature]</i>	10/11/07				

DOCKET COORD: *[Signature]* COUNCIL LIAISON: *[Signature]*

COUNCIL PRESIDENT: *[Signature]* SPOB CONSENT ADOPTION

REFER TO: _____ COUNCIL DATE: 11/6/07

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorizing the First Amendment to the Agreement (R-299932) with Psomas in an amount not to exceed \$190,348.00, ^{for} Rancho Bernardo Reservoir Rehabilitation; and
(Continued on other side)

11A. STAFF RECOMMENDATIONS: Adopt the resolutions

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 5, BRIAN MAIENSCHNEIN

COMMUNITY AREA(S): RANCHO BERNARDO

ENVIRONMENTAL IMPACT: This activity is Categorically exempt from CEQA pursuant to CEQA Guideline Section 15302.

HOUSING IMPACT: None

ATTACHMENTS: First Amendment to Agreement (4 sets), Original Agreement, Cost Estimate Sheet, Environmental Exemption.

CITY CLERK INSTRUCTION: Upon Council approval, please forward two (2) copies of the 1472 and Resolution(s) to Joanne Dinjotian at Water and Sewer Design Division, M.S. 908A

000146

SECTION 11 - PREPARATION OF: RESOLUTIONS, ORDINANCES, ETC. (CONTINUED):

2. Authorizing the expenditure of previously authorized funds in the amount of \$190,348.00 from Water Fund 41500, CIP No. 73-328.0 Rancho Bernardo Reservoir Rehabilitation, provided that the City Auditor and Comptroller first furnishes a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer, and authorizing the City Auditor and Comptroller to return excess budgeted funds to the appropriate reserve; and
3. Authorizing the Mayor, or his designee, to execute the First Amendment to the Agreement with Psomas.

RECEIVED

07 OCT 25 PM 4:27

CITY CLERKS OFFICE
SAN DIEGO, CA

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: September 28, 2007 REPORT NO: N/A
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Water Department
SUBJECT: First Amendment to the Agreement with Psomas for
Consultant Services
COUNCIL DISTRICT(S): Council District 5, Brian Maienschein
CONTACT/PHONE NUMBER: Alex Ruiz – (619) 533-6692
Iraj Asgharzadeh – (619) 533-5105
George Freiha – (619) 533-7449

REQUESTED ACTION:

Council authorization of the First Amendment to the Agreement with Psomas for additional consultant services for the Rancho Bernardo Reservoir Rehabilitation project.

STAFF RECOMMENDATION:

- Approve and authorize the expenditure of previously authorized funds in the amount of \$190,348 from the Water Fund 41500, CIP No. 73-328.0 for the first amendment to the agreement with Psomas for additional consultant services.
- Authorize the Mayor, or his designee, to execute First Amendment to the Agreement with Psomas for additional consultant services for an amount not to exceed \$190,348.

EXECUTIVE SUMMARY:

Rancho Bernardo Reservoir is located in the northern part of San Diego in the Rancho Bernardo community. The original scope and funding for the design of this project was approved by Council on December 7, 2004. It included the design for structural rehabilitation and seismic retrofit of the roof, columns, beams, corrosion protection and landscaping at a total design cost of \$390,000.00. The project was advertised on January 10, 2007, and awarded on June 14, 2007, to Gateway Pacific Contractors Inc.

Since the Rancho Bernardo Reservoir Rehabilitation contract was awarded, the roof condition has deteriorated considerably from the condition reflected in the original bidding document. The recent deterioration of the roof slab has reached a point where it is unsafe for City personnel to maintain and for the hired contractor to start rehabilitation of the reservoir. Presently, City Operations personnel have taken the reservoir out of service, however, they continue to maintain water supply in it for emergency use only. Water Operations continues to monitor the safety condition of the roof on a daily basis. The roof rehabilitation procedure planned in the original design is no longer the best approach because several of the pre-stressed strands across the joints were visibly corroded and/or broken. According to the structural engineer, the scope of work required needs to be changed from rehabilitation of the original roof to replacement with a brand new roof. This change will cause a new design phase beyond the original scope of work. It will be necessary to amend the original agreement with Psomas for additional consultant services to redesign the project for an amount not to exceed \$190,348.

FISCAL CONSIDERATIONS:

The total estimated cost of the First Amendment to the Agreement with Psomas for additional Consultant Services is \$190,348. Funding is available in Water Fund 41500, CIP No. 73-328.0 Rancho Bernardo Reservoir Rehabilitation. Water Department revenue is dedicated for this project. It is anticipated that 80% of the project cost will be reimbursed from a future debt issuance. The Auditor's Certificate will be issued prior to approval of the First Amendment to the Agreement.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The design consultant agreement with Psomas was presented and approved at the NR&C Meeting of November 17, 2004, and approved by the City Council on December 7, 2004, (R-299932). The Advertising for bids portion of the project was presented and approved at the NR&C Meeting on October 11, 2006, and approved by the City Council on December 6, 2006, (R-302124). The First Amendment to the Agreement with Psomas was approved on the Consent Agenda at the NR&C Meeting of September 26, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community meetings have been conducted to inform members of the public, including the Rancho Bernardo Town Council, the Rancho Bernardo Community Planning Board and local residents about the project and construction schedule. Further community outreach efforts are planned for the project and a CIP hotline is regularly maintained to answer any questions and provide information to the public. Door hangers, fact sheets, and updates to the City of San Diego Web site are also included in the plan for community outreach.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders are Psomas, the designer, who will receive payment for the amendment to the agreement, water customers, and the Rancho Bernardo Community. Moraes/Pham & Associates (Asian Pacific Male/DBE). Simon Wong Engineering (Asian Pacific Male/DBE)

 ASST DIR

J. M. Barrett
Water Department Director



R. F. Haas
Deputy Chief of Public Works

000149

PROJECT COST ESTIMATE

Rancho Bernardo Reservoir
First Amendment to Agreement
 (Project Title)

Agreement _____
 Advertise _____
 Award/Amend x

Prepared by: Luis Chavez
 Date: 17-Sep-07
 W.O. No. 185692

ACTIVITY	% OF E	CIP NO. OR OTHER SOURCE OF FUNDS			TOTALS	% OF E
		Current	This Request	Totals		
A. Planning/Design/Administration						
4114 Preliminary Engineering	6.3%	\$380,979.38	\$0.00	\$380,979.38		
4115 Outside Engineering - Tasks	1.4%	\$85,000.00	\$0.00	\$85,000.00		
4116 Construction Engineering	7.9%	\$478,254.62	\$0.00	\$478,254.62		
4118 Engineering Design	9.6%	\$390,000.00	8500 \$190,348.00	\$580,348.00	Psomas	
41181 Engineering Design #2	0.0%			\$0.00		
4151 Professional Services	0.0%			\$0.00		
4159 Construction Management	0.2%	\$10,000.00	\$0.00	\$10,000.00	URS	
41591 Construction Management #2	0.0%	\$0.00	\$0.00	\$0.00		
Total Planning/Design/Administration		\$1,344,234.00	\$190,348.00	\$1,534,582.00	\$1,534,582.00	25.5%
B. Construction						
4150 Safety	0.0%		\$0.00	\$0.00		
4220 Construction Contract	69.0%	\$4,156,444.00	\$0.00	\$4,156,444.00		
42201 Construction Contract #2	0.0%		\$0.00	\$0.00		
4226 City Forces Work	2.1%	\$125,000.00		\$125,000.00		
4810 OCIP / Professional Liability	0.0%		\$0.00	\$0.00		
4981 SDDPC Support	0.0%			\$0.00		
Total Construction		\$4,281,444.00	\$0.00	\$4,281,444.00	\$4,281,444.00	71.1%
C. Equipment and Furnishings						
3316 Pipe Fittings	0.0%			\$0.00		
4922 Construction Related	0.0%			\$0.00		
Total Equipment and Furnishings		\$0.00	\$0.00	\$0.00	\$0.00	0.0%
D. Contingencies						
4905 Contingencies	3.5%	\$207,828.00	\$0.00	\$207,828.00		
4909 Pooled Contingencies	0.0%		\$0.00	\$0.00		
Total Contingencies		\$207,828.00	\$0.00	\$207,828.00	\$207,828.00	3.5%
SUBTOTAL		\$5,833,506.00	\$190,348.00	\$6,023,854.00	\$6,023,854.00	100.1%
E. Equipment & Furnishings						
4922 Equipment & Furnishings		\$0.00		\$0.00	\$0.00	
F. Other Funding						
4279 Other Non Personr		\$122,536.79	\$0.00	\$122,536.79	\$122,536.79	
4280 Other Non Personnel - Auth		\$3,145,728.00	8500 (\$190,348.00)	\$2,955,380.00	\$2,955,380.00	
SUBTOTAL		\$3,268,264.79	(\$190,348.00)	\$3,077,916.79	\$3,077,916.79	
TOTAL PROJECT COST		\$9,101,770.79	\$0.00	\$9,101,770.79	\$9,101,770.79	

(When Applicable)		
SAVINGS BY USE OF CITY FORCES		
	City Forces	Contract
Labor		
Material		
Equip.		
Profit		
TOTAL	0	0

Prev. Auth. Res. #	R-299932	\$624,000.00
Prev. Auth. Res. #	R-302124	\$8,355,234.00
Prev. Auth. Res. #		
Prev. Auth. Res. #		
Prev. Auth. Res. #		
Total Previous Authorized		\$8,979,234.00
ADDITIONAL AUTH. REQUIRED		\$0.00

FUNDING:	41500			
CIP NO. [XX-XXX.X]	733280			
Programmed				
Uncom. Balance				
THIS REQUEST	0.00	0.00	0.00	\$0.00

COMMENTS: \$190,348 in funding available in object account 4280 (previously authorized by Council on R-302124) in Water Fund 41500, CIP 73-328.0

000150

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800293
ORIGINATING DEPT. NO.: 760

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$190,348.00

Vendor: Psomas

Purpose: Authorizing the expenditure of funds for the Consultant Services for Rancho Bernardo Reservoir Rehabilitation First Amendment to the Agreement, CIP 733280.

Date: October 24, 2007 By: *Yesha Bezuneh*
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	41500	760	391020	4118	185692				\$190,348.00
TOTAL AMOUNT										\$190,348.00

FUND OVERRIDE

APP09I DEPT: 30244 ORG LEVEL: 110 JO: 733280 PY: PRINT: N PG 1
 PRIOR PD: FY: 08 CY SPECIAL FUND FINANCIAL STATUS
 DEPT: CAPITAL IMPROVEMENT PROGRAM ORG: WATER *As of 10/05/07*
 OBJECT TITLE APPROPRIATION EXPENDITURE ENCUMBRANCE UNENC BAL APP
 4114 PRELIM ENG-CITY. 380979.38 380979.38
 4115 PRELIM ENG-O/S 85000.00 34157.50 50842.50
 4116 CONST ENGINEER. 478254.62 71803.83 406450.79
 4118 ENGINEERING SERV 390000.00 352610.09 37389.91
 4159 CONSTRUCT MGMT 10000.00 9911.46 88.54
 4220 CONST CONTRACT 4156444.00 4156444.00
 4226 C SERV-CITY FORC 125000.00 31428.48 93571.52
 4279 OTH NON PERSNL 122536.79 122536.79
 4280 OTH NON PRSNL AU 3145728.00 3145728.00
 4905 CONTINGENCY RES 207828.00 207828.00
 TOTAL SUPPL/SERV/OTHER 9101770.79 880890.74 8220880.05
 TOTAL WATER 9101770.79 880890.74 8220880.05

MESSAGE: THAT IS ALL OF THE OBJECT ACCOUNTS AND CLASSES.

000152 DETERMINATION OF: ENVIRONMENTAL EXEMPTION

Pursuant to The California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO

Project Number.: N/A

DATE: August 9, 2007

Action/Permit(s): Approval of Funding

Permit No.: N/A

Description of Activity: Rancho Bernardo Reservoir Rehabilitation involves rehabilitation of an existing, buried, concrete, 10 million gallon potable water reservoir. The re-habilitation activity includes but is not limited to, the replacement of a concrete roof with a new aluminum anti-reflective roof. All work will take place within the existing footprint of the facility and staging will occur within developed areas adjacent to the facility.

Location of Activity: Off Bernardo Center Drive in the Rancho Bernardo community of the City of San Diego.

1. This activity is EXEMPT FROM CEQA pursuant to:
- Section 15061(b)(1) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).
 - Section 15061(b)(3) of the State CEQA Guidelines ("General Rule").
2. This project is EXEMPT FROM CEQA pursuant to State CEQA Guidelines Section checked below:

ARTICLE 19 of GUIDELINES CATEGORICAL EXEMPTIONS (Incomplete list)

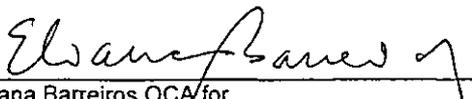
Sec.	Short Name
<input type="checkbox"/> 15301 1	Existing Facilities
<input checked="" type="checkbox"/> 15302 2	Replacement or Reconstruction
<input type="checkbox"/> 15303 3	New Construction or Conversion of Small Structures
<input type="checkbox"/> 15304 4	Minor Alterations to Land
<input type="checkbox"/> 15305 5	Minor Alterations in Land Use Limitations
<input type="checkbox"/> 15306 6	Information Collection
<input type="checkbox"/> 15311 11	Accessory Structures
<input type="checkbox"/> 15312 12	Surplus Government Property Sales
<input type="checkbox"/> 15315 15	Minor Land Divisions
<input type="checkbox"/> 15317 17	Open Space Contracts or Easements
<input type="checkbox"/> 15319 19	Annexation of Existing Facilities and Lots for Exempt Facilities
<input type="checkbox"/> 15325 25	Transfer of Ownership of Interest in Land to Preserve Open Space
<input type="checkbox"/> Other	

ARTICLE 18 of GUIDELINES STATUTORY EXEMPTIONS (Incomplete list)

Sec.	Short Name
<input type="checkbox"/> 15261	Ongoing Project
<input type="checkbox"/> 15262	Feasibility and Planning Studies
<input type="checkbox"/> 15265	Adoption of Coastal Plans and Programs
<input type="checkbox"/> 15268	Ministerial Projects
<input type="checkbox"/> 15269	Emergency Projects
<input type="checkbox"/> 15282L	Pipeline under a mile in length

It is hereby certified that the City of San Diego has determined the above activity to be exempt:

Distribution: George Freiha, Water Department CIP
Luis Chavez, Water Department CIP
Exemption or Project file


Eliana Barreiros OCA for
NICOLE A. MCGINNIS, SENIOR PLANNER
Water Department

Responsible Departments: Water Department
Development Services Department

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

RESOLUTION AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT TO THE AGREEMENT BETWEEN PSOMAS AND CITY OF SAN DIEGO FOR CONSULTING SERVICES AND AUTHORIZING THE EXPENDITURE OF FUNDS

WHEREAS, on December 7, 2004 the Council of the City of San Diego authorized the original agreement on file with the City Clerk as RR-29932 between the City of San Diego and Psomas (formerly known as Pountney Psomas) for professional services for work at the Rancho Bernardo Reservoir Rehabilitation Project;

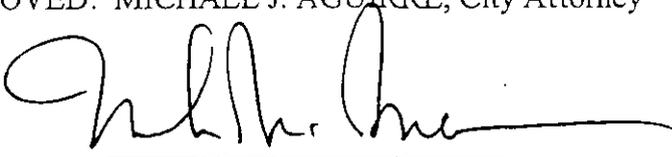
WHEREAS, since the Rancho Bernardo Reservoir's roof has recently deteriorated which has caused the previously prepared rehabilitation plans to become impracticable, the City requires that Psomas change the design of the reservoir's roof;

BE IT RESOLVED, by the Council of The City of San Diego, that the Mayor be and he is hereby authorized and empowered to execute, for and on behalf of said City, a First Amendment to the Agreement between the City of San Diego and Psomas on file in the office of the City Clerk as Document No. RR-_____ for professional services for expanded scope of work for the Rancho Bernardo Reservoir Rehabilitation Project in an amount not to exceed \$190,348;

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to appropriate and expend an amount not to exceed \$190,348 from Water Fund 41500, CIP No. 73-328.0 Rancho Bernardo Reservoir Rehabilitation Project, solely and exclusively to provide funds for the work required under the First Amendment;

BE IT FURTHER RESOLVED, that this activity is not a separate project for purposes of review under the California Environmental Quality Act pursuant to CEQA guidelines sections 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Mark M. Mercer
Deputy City Attorney

MMM: mm
10/24/2007
Or.Dept: Water
R-2008-357
AC 2800293

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

FIRST AMENDMENT TO AGREEMENT

This First Amendment to the Agreement between the City of San Diego (City) and Psomas for Consultant Services dated December 07, 2004, is hereby entered into by and between the City of San Diego, a municipal corporation, and Psomas, formerly known as Poutney Psomas, (Consultant).

RECITALS

A. The City and Consultant [collectively referenced herein as the "Parties"] entered into the Agreement, which is on file in the Office of the City Clerk as Document No. **R-299932**, to provide Consultant Services for The Rancho Bernardo Reservoir Rehabilitation Project.

B. The City desires to execute a First Amendment to the Agreement for the Consultant (First Amendment) to provide additional Professional Services, as indicated in the expanded Scope of Services [Exhibit A-1], for a compensation amount not to exceed \$190,348.00 with total compensation for services provided under the Agreement not to exceed \$580,348.00.

C. Consultant desires to provide the services required under this First Amendment.

D. The Corporate name of the Consultant has changed from "Pountney Psomas" to "Psomas."

NOW, THEREFORE, in consideration of the Recitals stated above and incorporated herein by this reference and the mutual obligations of the Parties expressed herein, the Parties agree to modify the Agreement, which is incorporated herein by reference, as follows:

1. That Section 1.1, Scope of Services, be deleted in its entirety and replaced with the following:

1.1 Scope of Services. The Consultant shall perform Professional Services as set forth in the written Scope of Services [Exhibits A and A-1] at the direction of the City on a fixed fee basis as specifically enumerated in the Compensation and Fee Schedule [Exhibit B-1] and [Exhibit C-1], and in accordance to the Time Schedule [Exhibit D-1].

2. That Section 3.1.1 be deleted in its entirety and replaced with the following:

3.1.1 Contract Amount. The City shall compensate the Consultant on an hourly basis, for all Professional Services related to performance under this Agreement, in an amount not to exceed \$580,348.00 (Contract Amount), as set forth in the Compensation Schedule [Exhibit B-1].

3. That Section 3.1.2 be deleted in its entirety and replace with the following:
3.1.2 Fees. The Consultant shall be entitled to compensation for Professional Services under this Agreement, whether within the Scope of Services or as Additional Services, based on the Fee Schedule [Exhibit C-1]. For the duration of this Agreement, the Consultant shall not be entitled to fees which exceed those shown in the Fee Schedule.

4. That Article VI, INDEMNIFICATION, be deleted in its entirety and replaced with the following:

ARTICLE VI

INDEMNIFICATION

6.1 Indemnification. Other than in the performance of design professional services which shall be solely as addressed in Section 6.2 below, to the fullest extent permitted by law, Design Professional shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Design Professional or its Subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Design Professional's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

6.2 Design Professional Services Indemnification and Defense.

6.2.1 Design Professional Services Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6.2.2 Design Professional Services Defense. Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6.3 Insurance. The provisions of this Article are not limited by the requirements of Section 4.3 related to insurance.

6.4 Enforcement Costs. The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this Article.

5. That Article VIII, Miscellaneous, be amended to add the following:

8.17 San Diego's Strong Mayor Form of Governance. All references to 'City Manager' in this Agreement and all subsequent amendments thereto shall be deemed to refer to 'Mayor.' This section becomes effective on January 1, 2006 and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego City Charter."

6. That the following attachments are incorporated herein by reference as follows: Exhibits A-1 (Scope of Services), B-1 (Compensation Schedule), C-1 (Fee Schedule), and D-1 (Time Schedule).

7. The Parties agree that this First Amendment to the Agreement represents the entire understanding of the Consultant and the City and affects only those paragraphs referred to, and all other terms and conditions of the Agreement remain in full force and effect.

8. That Psomas, pursuant to Section 8.9 of the Agreement, assumes all duties and obligations under the Agreement which was previously the responsibility of Pountney Psomas. Therefore all references to "Pountney Psomas" in the Agreement and the First Amendment are hereby deleted and replaced with "Psomas"

THIS FIRST AMENDMENT to the AGREEMENT, shall affect only the page(s), paragraph(s), and/or terms and conditions referred to herein. All other pages, paragraphs, and/or terms and conditions of this AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to the Agreement between the City of San Diego and Psomas for Consultant Services is executed by the City of San Diego acting by and through its Mayor, or his designee, pursuant to Resolution No. _____ authorizing such execution, and by Consultant.

THE CITY OF SAN DIEGO
Mayor or Designee

By _____

Name: W. Downs Prior

Title: Principal Contract Specialist

Date: _____

PSOMAS

By:



Name: Curtis Edwards, PE

Title: VicePresident

Date: 10-1-07

I HEREBY APPROVE the form and legality of the foregoing Amendment on this _____ day of _____, 2007.

MICHAEL AGUIRRE, City Attorney

By:

Mark M. Mercer
Deputy City Attorney

PSOMAS

000159

August 31, 2007

EXHIBIT A-1

Mr. George Freiha
CITY OF SAN DIEGO, CIP DIVISION
600 B Street, Suite 700, MS 907
San Diego, CA 92101

**SUBJECT: RANCHO BERNARDO RESERVOIR REHABILITATION
WO # 1967-011; Additional Scope of Work**

Dear George:

The following is our final revised fee proposal and scope of work for the additional items of work that have been requested by the City. Please note that we have revised these costs to reduce scope of work. Based on the costs shown below Psomas anticipates attending an additional 5 meetings and 2 site visits. Simon Wong Engineering anticipates attending an additional 3 meetings and 3 site visits. The items of proposed work include the following:

CHANGE CURRENT ROOF REPAIR TO NEW ALUMINUM ROOF

Due to significant deterioration in the existing roof, the City has requested a new aluminum roof to be constructed instead of the retrofit of the existing roof, as shown on the current plans. As a result of this, the plans and specifications will change significantly. We will prepare demolition plans for the demolition contractor identifying what items will be removed from the roof in addition to the roof slab, beams, and girders. These plans will be submitted to the City prior to the submittal of the revised set of complete plans so the permit process can begin.

In addition, we will revise each of our sheets, as necessary, to accommodate the new aluminum roof. We will coordinate closely with the roof supplier, structural engineer, and electrical engineer to ensure the plans are revised properly.

All changes mentioned in Addendum D will be incorporated into one final set of drawings and specifications. An updated cost estimate will be provided to the City.

4455 Murphy Canyon Road
Suite 200
San Diego, CA 92123-4379
858.576.9200
858.565.1738 Fax
www.psomas.com

Mr. George Freiha
August 31, 2007
Page 2
WO # 1967-011 [A]

EXHIBIT A-1

CONSTRUCTION PHASE

The changes will result in an increase in the construction phase work required of Psomas. We anticipate additional shop drawing reviews, RFI's, site visits, and meetings.

As a result of the increase in the scope of work, we are requesting an increase in funds for the associated tasks. A breakdown of each task and price increase is as follows:

1. EXTRA DESIGN and CONSTRUCTION (Proposed New Task 11)

We are requesting the creation of a new Task #11 called, "Extra Design and Construction", with a budget as shown below:

PROPOSED TASK 11, EXTRA DESIGN (PSOMAS):	\$44,892
PROPOSED TASK 11, EXTRA DESIGN (Electrical):	\$1,050
<u>PROPOSED TASK 11, EXTRA DESIGN (Structural):</u>	<u>\$102,140</u>
PROPOSED TOTAL:	\$148,082

2. CONSTRUCTION (Task 8)

We are requesting the modification of the existing Task 8 to include additional construction period services with a budget as shown below:

TASK 8, CONSTRUCTION PHASE (CURRENT):	\$46,199
TASK 8, EXTRA DESIGN (PSOMAS):	\$5,734
TASK 8, EXTRA DESIGN (Electrical):	\$0
<u>TASK 8, EXTRA DESIGN (Structural):</u>	<u>\$34,332</u>
PROPOSED TOTAL:	\$86,265

3. REIMBURSABLES (Task 9)

The increased scope of work will require additional reproduction costs. We recommend increasing the Reimbursables Budget as follows:

TASK 9, REIMBURSABLES (CURRENT):	\$5,205
<u>REQUESTED EXTRA (Psomas):</u>	<u>\$2,200</u>
PROPOSED TOTAL:	\$7,405

PSOMAS

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Mr. George Freiha
August 31, 2007
Page 3
WO # 1967-011 [A]

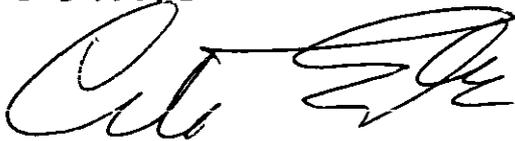
EXHIBIT A-1

TOTAL REQUESTED BUDGET INCREASE:	\$190,348.00
Existing Contract Amount:	\$389,986.70
Proposed Contract Amount:	\$580,334.70

After your review of the above extra services and fees, please feel free to contact either Michael Pollard or me with any questions.

Thank you,

PSOMAS



Curtis L. Edwards, PE 26520, F. ASCE
Vice President & Senior Project Manager

CLE/cjc

000162

EXHIBIT B-1
Compensation Schedule

	Original Agreement	First Amendment	Totals
Description	Total Dollar Amount	Total Dollar Amount	
Phase A. Services During Design	\$68,758.97	\$44,892.00	\$113,650.97
Phase B. Services During Bidding	\$2,539.84		\$2,539.84
Phase C. Services During Construction	\$16,273.00	\$5,734.00	\$22,007.00
SubTotal: Consultant Services	\$87,571.81	\$50,626.00	\$138,197.81
SubConsultant Fees Plus 5% mark-Up	\$235,114.95	\$137,522.00	\$372,636.95
Misc. Reimbursable Expense	\$2,300.00	\$2,200.00	\$4,500.00
Additional Services	\$65,000.00		\$65,000.00
Total Not to Exceed Contract Amount	\$390,000.00	\$190,348.00	\$580,348.00

Rancho Bernardo Reservoir Rehabilitation
First Amendment to the Agreement

EXHIBIT C-1

FEE SCHEDULE

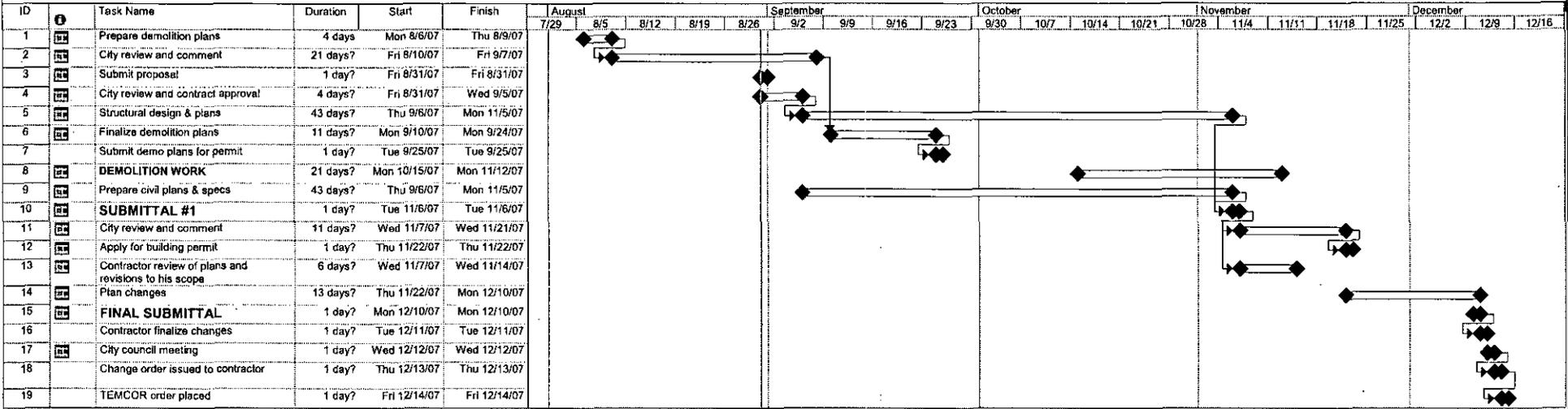
Proposed Psomas Billing Rates July 2007-June 2008					
Classification	Employee	2006 Billing Rate	2007 Hourly Rate	CPI Adjustment	Proposed New Billing Rates
Principal Engineer	Peter Pountney	\$ 205.47	\$ 81.51	1.0278	\$211.18
Principal Engineer	Curtis Edwards	\$ 178.74	\$ 69.51	1.0278	\$183.71
Sr. Assoc. Engineer	Cheui Young	\$ 140.83	\$ 53.72	1.0278	\$144.75
Assoc. Eng./Sr. PM	Sandra Russell	\$ 136.86	\$ 52.26	1.0278	\$140.66
Assoc. Eng./Sr. PM	James Bliss	\$ 137.54	\$ 53.49	1.0278	\$141.36
Project Engineer	Michael Pollard	\$ 116.61	\$ 49.57	1.0278	\$119.85
Design Engineer	Scott Hamlin	\$ 87.05	\$ 36.75	1.0278	\$89.47
Assistang Engineer	Sean Diaz	\$ 71.50	\$ 32.55	1.0278	\$73.49
Staff Engineer	Ken Wright	\$ 85.02	\$ 32.75	1.0278	\$87.38
CADD Drafter, Sr.	Gin Yen	\$ 78.25	\$ 29.85	1.0278	\$80.43
CADD Drafter, Sr.	Paula Ethridge	\$ 74.25	\$ 29.70	1.0278	\$76.31
Staff Engineer	ian Moores	\$ 72.90	\$ 27.81	1.0278	\$74.93
Staff Engineer	Katie Shannon		\$ 26.45	1.0278	\$71.42
Staff Engineer	Rebecca Abbott		\$ 26.45	1.0278	\$71.42
Staff Engineer	Abraham Padilla		\$ 16.00	1.0278	\$43.20
Wordprocessor	Carol Caves	\$ 58.32	\$ 22.46	1.0278	\$59.94

Rancho Bernardo Reservoir
First Amendment to the Agreement

EXHIBIT D-1

CITY OF SAN DIEGO
 RANCHO BERNARDO RESERVOIR
 REVISED SCHEDULE FOR ALUMINUM ROOF
 1967011

0100164



Project: 2007 0829 Schedule
 Date: Fri 8/31/07

Task Progress Summary External Tasks Deadline
 Split Milestone Project Summary External Milestone

**AGREEMENT BETWEEN THE CITY
OF SAN DIEGO AND POUNTNEY PSOMAS
FOR CONSULTING SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and Pountney Psomas [Consultant] for the Consultant to provide Professional Services to the City on Rancho Bernardo Reservoir Rehabilitation [Project].

RECITALS

The City wants to retain the services of a professional Engineering firm to provide design services [Professional Services].

The Consultant has the expertise, experience and personnel necessary to provide the Professional Services for the Project.

The City and the Consultant [Parties] want to enter into an Agreement [Agreement] whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Professional Services for the Project.

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

ARTICLE I - PROFESSIONAL SERVICES

The above-listed recitals are true and correct and are hereby incorporated by reference.

1.1 Scope of Services.

The Consultant shall perform Professional Services as set forth in the written Scope of Services (Scope) [Exhibit A] at the direction of the City, and Time Schedule [Exhibit D].

1.2 Contract Administrator.

The Water Department is the contract administrator for this Agreement. The Consultant shall provide Professional Services under the direction of a designated representative of the Water Department. The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultant's performance of the Professional Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise.

DOCUMENT NO. RR-299932

FILED DEC 07 2004

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

1.3 City Modification of Scope of Services.

The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to, or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of any of the Professional Services, the Consultant shall so notify the City. If appropriate, an equitable adjustment to the Consultant's compensation may be made, provided that any adjustment must be approved by both Parties in writing.

1.4 Written Authorization.

Prior to performing any Professional Services in connection with the Project, the Consultant shall obtain from the City a written authorization to proceed. The Consultant shall advise the City in writing immediately of any anticipated change in the Scope of Services, Compensation Schedule, or Time Schedule, and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve the Consultant from its duty to render all Professional Services in accordance with applicable laws and accepted industry standards.

1.5 Confidentiality of Services.

All Professional Services performed by the Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Consultant, at the time that it was disclosed to the Consultant by the City, (b) subsequently becomes publicly known through no act or omission by the Consultant, or (c) otherwise becomes known to the Consultant other than through disclosure by the City. Except for Subconsultants covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

1.6 Competitive Bidding.

The Consultant shall ensure that all plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The Consultant shall submit this written justification to the City prior to beginning work on such plans or specifications. Whenever the Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

1.7 Review of Services.

All Professional Services performed pursuant to this Agreement shall be subject to review and approval by the City at all reasonable times and places during the term of the Agreement. Professional Services include all services performed, including but not limited to

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workmanship and documents of any type delivered to the City pursuant to the terms of the Agreement. No review made prior to final acceptance shall relieve Consultant of any responsibility or duty pursuant to the terms of the Agreement.

In the event that any Professional Services do not conform to the requirements of this Agreement or any applicable industry standards, the City may require Consultant to promptly correct or replace the Professional Services in question. The cost of correction or replacement shall be borne by Consultant. If Consultant fails to promptly perform the correction or replacement, the City may terminate the Agreement for default, in accordance with Section 2.7 of this Agreement. City may charge to Consultant all costs, expenses and damages associated with any such correction or replacement.

ARTICLE II - DURATION OF AGREEMENT

2.1 Term of Agreement.

This Agreement shall be effective on the date it is executed by the last party to sign the Agreement, and it shall be effective until December 31, 2009 or until completion of the last task hereunder, whichever occurs first.

2.2 Time of Essence.

Time is of the essence for this Agreement.

2.3 Notification of Delay.

The Consultant shall immediately notify the City in writing of any delay in completion of the Professional Services as set forth in the Scope. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If the delay affects a material part of the Project, the City may exercise its rights under Sections 2.5-2.8 of this Agreement.

2.4 Delay.

If delays in the performance of the Professional Services as set forth in the Scope are caused by unforeseen events beyond the control of both Parties, such delay may entitle the Consultant to a reasonable extension of time, but such delay shall not entitle the Consultant to damages or additional compensation. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Consultant's work; inability to obtain materials, equipment or labor; required additional Professional Services; or other specific reasons agreed to between the City and the Consultant; provided, however, that (a) this provision shall not apply and the Consultant shall not be entitled to an extension of time for a delay caused by the acts or omissions of the Consultant; and, (b) that a delay caused by the inability to obtain materials shall not entitle the Consultant to an extension of time unless the Consultant furnishes the City, in a timely manner, documentary proof, to the City's satisfaction, of the inability to obtain materials.

2.5 City's Right to Suspend for Convenience.

The City may, at its sole option and for its convenience, suspend all or any portion of the Consultant's performance of the Professional Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the Consultant of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the Consultant a sum equivalent to the reasonable value of the Professional Services the Consultant has performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Consultant. The City may then require the Consultant to resume performance of the Professional Services in compliance with the terms and conditions of this Agreement; provided, however, that the Consultant shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 City's Right to Terminate for Convenience.

The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Professional Services shall be effective upon receipt of the notice by the Consultant. After termination of this Agreement, the Consultant shall complete any and all additional Scope necessary for the orderly filing of documents and closing of the Consultant's Professional Services under this Agreement. For services rendered in completing the work, the Consultant shall be entitled to fair and reasonable compensation for the Professional Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all drawings, plans, calculations, specifications and other documents or records related to both the Project and to the Consultant's Professional Services on the Project. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

2.7 City's Right to Terminate for Default.

If the Consultant fails to perform or adequately perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in this Section 2.7 are cumulative and shall not limit, waive or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement, or hereinafter enacted or established, that may be available to the City against the Consultant.

2.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.

If the Consultant files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon the Consultant, immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any

rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in this Section 2.8 are cumulative and shall not limit, waive or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement, or hereinafter enacted or established, that may be available to the City against the Consultant.

ARTICLE III - COMPENSATION

3.1 General.

3.1.1 Contract Amount. The City shall compensate the Consultant on an hourly basis, for all Professional Services related to performance under this Agreement, in an amount not to exceed \$390,000 (Contract Amount), as set forth in the Compensation Schedule [Exhibit B].

3.1.2 Fees. The Consultant shall be entitled to compensation for Professional Services under this Agreement, whether within the Scope of Services or as Additional Services, based on the Fee Schedule [Exhibit C]. For the duration of this Agreement, the Consultant shall not be entitled to fees which exceed those shown in the Fee Schedule.

3.2 Manner of Payment.

Consultant shall bill all fees and expenses (Costs) incurred in accordance with this Agreement directly to the City on a monthly basis.

3.2.1. Payments. The Consultant shall include with each invoice a description of completed Professional Services as set forth in the Scope. Invoices shall be submitted within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring Costs to be reimbursed under this Agreement, if any. Invoices to the City must be in accordance with the Fee Schedule and amounts approved by City will be paid within thirty calendar days of receipt.

3.2.2. False Claims. Pursuant to the California False Claims Act (Government Code sections 12650-12655), any Consultant that knowingly submits a false claim to the City for compensation under the terms of this Agreement may be held liable for treble damages and up to a \$10,000 civil penalty for each false claim submitted. This section shall also be binding on all Subconsultants.

A Consultant or Subconsultant shall be deemed to have submitted a false claim when the Consultant or Subconsultant: a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; c) conspires to defraud the City by getting a false claim allowed or paid by the City; d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to the City; or e) is a beneficiary of an inadvertent submission of a false claim to the City, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.3 Additional Services.

If the City requires additional Professional Services [Additional Services] beyond the Scope of Services, except for Additional Costs as described in Section 3.4 of this Agreement, the Consultant will be paid an additional fee. For Additional Services, if required, a maximum fee of \$65,000 will be paid. The City and the Consultant must agree in writing upon such fee for a specific task based on the Fee Schedule prior to the Consultant beginning the Additional Services.

3.4 Additional Costs.

Additional Costs are those costs that can be reasonably determined to be related to the Consultant's errors or omissions, and may include Consultant, City, or Subconsultant overhead, construction, materials, demolition, and related costs. The Consultant shall not be paid for Professional Services required due to the Consultant's errors or omissions and the Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Consultant. Whether or not there are any monies due, or becoming due, Consultant shall reimburse the City for Additional Costs due to the Consultant's errors or omissions.

3.5 Excess Costs.

3.5.1 Notification. The Consultant shall promptly notify the City in writing if at any time the Consultant has reason to believe that Costs incurred in the performance of Professional Services will exceed the following limits;

3.5.1.1 80% of Contract Amount. Costs to be incurred in the next sixty calendar days, when added to all Costs previously incurred, will exceed eighty percent (80%) of the Contract Amount.

3.5.1.2 Total Contract Amount. Cost for performance of the Scope of Services will exceed the Contract Amount.

3.5.2 Estimate of Completion. The Consultant shall include a revised estimate to complete the Scope of Services under this Agreement in the Notification required under Section 3.5.1.

ARTICLE IV - CONSULTANT'S OBLIGATIONS

4.1 Industry Standards.

The Consultant agrees that the Professional Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional engineering firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the City Manager, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Right to Audit.

4.2.1 Access. The City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subconsultant's premises to review and audit the Consultant's compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all Project-related records with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

4.2.2 Audit. The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Consultant is in compliance with all requirements under this Agreement.

4.2.2.1 Cost Audit. If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.1.1 Accounting Records. The Consultant shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Consultant shall make available to the City for review and audit, all Project related accounting records and documents, and any other financial data. Upon City's request, the Consultant shall submit exact duplicates of originals of all requested records to the City.

4.2.3 City's Right Binding on Subconsultants. The Consultant shall include the City's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subconsultants.

4.2.4 Compliance Required before Mediation or Litigation. A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article VII is the Consultant's full compliance with the provisions of this Section 4.2 within sixty days of the date on which the City mailed a written request to review and audit compliance.

4.3 Insurance.

The Consultant shall not begin Professional Services under this Agreement until it has: a) obtained insurance certificates reflecting evidence of all insurance required in Section 4.3.1, however, the City reserves the right to request, and Consultant shall submit, copies of any policy upon reasonable request by the City; b) obtained City approval of each company or companies as required by Article IV, Section 4.3.2; c) confirmed that all policies contain the specific provision required in Article IV, Section 4.3.4.

Further, the Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.3.1. Types of Insurance. At all times during the term of this Agreement, the Consultant shall maintain insurance coverages as follows:

4.3.1.1. Commercial General Liability. For all of the Consultant's operations, including contractual, broad form property damage, completed operations, and independent Consultant's liability, the Consultant shall keep in full force and effect, during any and all work on this Project, all applicable insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of \$1 million per occurrence, subject to an annual aggregate of \$1 million for general liability, completed operations and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability to another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable. The per occurrence limits required may be achieved by combining layers of excess or umbrella insurance with underlying Commercial General Liability Coverage, provided that the sum of the limits of all policies meet or exceed the required limits.

4.3.1.2. Commercial Automobile Liability. For all of the Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile [any auto]. The City shall be named as an additional insured, but only for liability arising out of Professional Services performed under this Agreement.

4.3.1.3. Architects & Engineers Professional Liability. For all of the Consultant's employees who are subject to this Agreement, the Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of \$1 million per claim and \$2 million annual aggregate. Consultant shall ensure both that (1) this policy retroactive date is on or before the date of commencement of the Project; and (2) this policy has a reporting period of three years after the date of completion or termination of this Agreement. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.

4.3.1.4. Worker's Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a workers compensation policy. That policy shall provide a minimum of \$1,000,000 of employers liability coverage, and Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

4.3.2. Rating Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" & "V" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City.

4.3.3. Deductibles. All deductibles on any policy shall be the responsibility of the Consultant.

4.3.4. Specific Provisions Required. Each policy required under Article IV, Sections 4.3.1.1. through 4.3.1.4 shall expressly provide, and an endorsement shall be submitted to the City, that:

4.3.4.1. Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, The City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City.

4.3.4.2. The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

4.3.4.3. The policies cannot be canceled, non renewed or materially changed except after thirty calendar days prior written notice by the Consultant to the City by certified mail, as reflected in an endorsement which shall be submitted to the City except for non-payment of premium, in which case ten days notice will be provided.

4.3.4.4. Before performing any Professional Services, the Consultant shall provide the City with all Certificates of Insurance accompanied with all endorsements.

4.3.5 Additional Consultant Insurance. The Consultant may obtain additional insurance not required by this Agreement.

4.3.6 Subconsultant Coverage Validation. Consultant shall be responsible for confirming that Subconsultants keep in full force and effect for the duration of this Agreement all insurance policies required in Section 4.4.1.1.

4.4 Subconsultants.

The Consultant's hiring of or retaining any third parties [Subconsultants] to perform services related to the Project [Subconsultant Services] is subject to prior approval by the City. Consultant shall list on the Subconsultants List [Exhibit E (Attachment CC)] all Subconsultants known to the Consultant at the time this Agreement is executed. If at any time after this Agreement is entered into, the Consultant identifies a need for additional Subconsultant Services, the Consultant shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subconsultant Services. The Consultant's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subconsultant Services. The Consultant may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

4.4.1 Subconsultant All contracts entered into between the Consultant and a Subconsultant shall contain the information as described in Sections 4.6, 4.7, and 4.10.3, and shall provide as follows:

4.4.1.1 Each Subconsultant shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subconsultant shall obtain, and Consultant shall require the Subconsultant to obtain, all policies described in Section 4.3.1. with the exception of the coverage specified in Section 4.3.1.3.

4.4.1.1.1 Subconsultants shall have existing Architects and/or Engineers professional liability insurance and will be allowed to retain those current coverage limits and not be required to increase those limits to higher levels due to their third party participation in this Agreement.

4.4.1.2 The Consultant is obligated to pay the Subconsultant, for Consultant- and City-approved invoice amounts, out of amounts paid by the City to the Consultant, not later than fourteen working days from the Consultant's receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Consultant and any Subconsultant to negotiate fair and reasonable pricing and payment provisions among themselves.

4.4.1.3 In the case of a deficiency in the performance of Subconsultant Services, the Consultant shall notify the City in writing of any withholding of payment to the Subconsultant, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subconsultant must take in order to receive the amount withheld. Once the Subconsultant corrects the deficiency, the Consultant shall pay the Subconsultant within fourteen working days of Consultant's receipt of the next payment from the City.

4.4.1.4. In any dispute between the Consultant and Subconsultant, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Consultant and Subconsultant should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this provision.

4.5 Contract Activity Report.

The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report [Exhibit E (Attachment BB)]. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each Subconsultant listed in the Report. The Consultant agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subconsultant Services as described in Sections 4.4.1.2 and 4.4.1.3 of this Agreement.

4.6 Non-Discrimination Requirements.

4.6.1 **Compliance with the City's Equal Opportunity Contracting Program.** The Consultant and each of its Subconsultants shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements which is attached hereto as Exhibit E and incorporated herein by this reference.

4.6.2 **Non-Discrimination Ordinance.** Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subconsultants, vendors or suppliers. Consultant shall provide equal opportunity for Subconsultants to participate in subconsulting opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Consultant and any Subconsultants, vendors and suppliers.

4.6.3 **Compliance Investigations.** Upon the City's request, Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subconsultants, vendors, and suppliers that Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount

paid by Consultant for each subcontract or supply contract. Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance* (Municipal Code Sections 22.3501-22.3517). Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination Ordinance* apply only to violations of said *Nondiscrimination Ordinance*.

4.7 Drug-Free Workplace.

The Consultant agrees to comply with the City's Drug Free Workplace requirements set forth in Council Policy 100-17, adopted by Council Resolution No. R-277952 and incorporated into this Agreement by this reference. Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit F].

4.7.1. Consultant's Notice to Employees. The Consultant shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

4.7.2. Drug-Free Awareness Program. The Consultant shall establish a drug-free awareness program to inform employees about all of the following:

4.7.2.1. The dangers of drug abuse in the work place.

4.7.2.2. The policy of maintaining a drug-free work place.

4.7.2.3. Available drug counseling, rehabilitation, and employee assistance programs.

4.7.2.4. The penalties that may be imposed upon employees for drug abuse violations.

4.7.3. Posting the Statement. In addition to Section 4.7.1 above, the Consultant shall post the drug-free policy in a prominent place.

4.7.4. Subconsultant's Agreements. The Consultant further certifies that each contract for Subconsultant services for this Project shall contain language that binds the Subconsultant to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Consultants and Subconsultants shall be individually responsible for their own drug-free work place program.

4.8 Title 24/Americans with Disabilities Act Requirements.

The Consultant shall warrant and certify that any Project plans and specifications prepared in accordance with this Agreement meet all current California Building Standards Code, California Code of Regulations, Title 24 [Title 24] and Americans with Disabilities Act Accessibility Guidelines [ADAAG] requirements, and are in compliance with The Americans with Disabilities Act of 1990. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed. Prior to execution of this Agreement, the Consultant

shall complete and submit to the City the Consultant Certification for Title 24/ADA Compliance [Exhibit H].

4.8.1 Consultant has sole responsibility and obligation for designing the project to comply with the ADA and Title 24 as described in this Section; however, as owner of the facility, the City is exposed to liability for projects on which designers fail to meet this obligation. Consequently, the City is implementing an evaluation of certain design aspects to ensure a compliant facility. The Consultant shall complete and submit an ADA Compliance Review Checklist. This Checklist is designed to assist consultants in meeting their ADA obligations under the contract (Consultant also must meet Title 24 which these checklists do not cover). These checklists are not comprehensive. The checklists merely reflect the specific problematic areas of compliance with ADA commonly seen by the City. As a result, the City will be checking only these areas of ADA prior to acceptance of a Consultant's design. The Consultant is obligated to meet all additional laws which are not included on the City's ADA Design Review Checklist, and/or to advise the City at any time if they feel components on the checklist misrepresent the current state of the law. These ADA checklists and the City's access review process in no way limits the Consultant's obligation under the agreement.

4.9 Product Endorsement.

The Consultant acknowledges and agrees to comply with the provisions of the City's Administrative Regulation 95-65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

4.10 Conflict of Interest.

The Consultant is subject to all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

4.10.1. If, in performing the Professional Services set forth in this Agreement, the Consultant makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

4.10.1.1. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Consultant shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Consultant is subject to a conflict of interest code. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

4.10.1.2. If the City requires the Consultant to file a statement of economic interests as a result of the Professional Services performed, the Consultant shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance,

including the prohibition against lobbying the City for one year following the termination of this Agreement.

4.10.2. The Consultant shall establish and make known to its employees, agents, and subconsultants, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

4.10.3. The Consultant and its Subconsultants having subcontracts amounting to 1% or more of the value of the Contract Amount agreed to under this Agreement are precluded from participating in design services on behalf of the contractor, construction management, and any other construction services related in any way to this Project without the prior written consent of the City.

4.10.4. The Consultant's personnel employed on the Project shall not accept gratuities or any other favors from any Subconsultants or potential Subconsultants. The Consultant shall not recommend or specify any product, supplier, or contractor with whom the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.10.5. If the Consultant violates any conflict of interest law or any of the provisions in Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Consultant to liability to the City for attorneys fees and all damages sustained as a result of the violation.

4.11 Mandatory Assistance.

If a third party dispute or litigation, or both, arises out of, or relates in any way to the Professional Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.12 Compensation for Mandatory Assistance.

The City will reimburse, as described in Article III of this Agreement, the Consultant for any fees and expenses incurred for required Mandatory Assistance as Additional Services defined in Section 3.3. The City in its sole discretion, shall determine whether these fees, expenses, and Professional Services rendered under Section 4.11, were necessary due to the Consultant's or its agents', officers', and employees' conduct or failure to act. If the City determines that such fees, expenses, or Professional Services were the result of the Consultant's or agents', officers', and employees' conduct, in part or in whole, the City is entitled to be reimbursed for any payments made for these fees, expenses, or Professional Services. Reimbursement may be through any legal means necessary, including City's withholding of payment.

4.13 Attorney Fees related to Mandatory Assistance.

In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any

attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

4.14 Year 2000 Compliance:

Consultant warrants that the Professional Services on this Project and each product delivered, incorporated or designed for use under this Agreement that contains or utilizes any software, hardware, firmware or any device which requires or is designed to do any processing, analysis, calculating or tracking of date/time data or information shall be able to accurately process, track, or create such date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations to the extent necessary for the Project, and each product to function correctly and accurately from, into, and between all dates and times, including but not limited to, from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and later, for the life of the Project.

4.15 Project Site Safety.

4.15.1 Compliance With Safety Program. The Consultant and each of its Subconsultants shall comply with The City of San Diego Water Department Safety and Health Program: Contractor's Safety Management Program, (Exhibit G) as adopted for each Project Site where Professional Services are performed pursuant to this Agreement. The obligation of the Consultant is limited to those responsibilities set forth in Section 6.0 of Exhibit G.

4.15.2 Project Site Visits. Any representative of the Consultant or its subconsultants visiting the Project Site shall comply with Section 7.14 of the aforementioned Safety Program which provides in part "... minimum personal protective equipment required on all Projects consists of high visibility safety vest, ANSI approved hard hat, safety glasses with side shields and steel-toed footwear...". This provision is strictly enforced and there are no exceptions.

4.16 Energy Conservation Specifications.

Technological advances in energy conservation devices such as lighting and Heating Ventilation and Air Conditions (HVAC) enable additional energy savings over that required by the State of California Title 24 Energy Standards. The Consultant shall be responsible for preparing a cost savings comparison of such devices for City review. The purpose of the comparison is to identify the additional initial cost of such devices, versus their long-term energy savings. The Consultant shall prepare a cost savings matrix that lists each device being considered and 1, 3, 5, and 10-year projected savings. The comparison shall include, but not be limited to the below listed devices:

Devices: Lighting, HVAC, Water Heating, and Motors.

4.17 Notification of Increased Construction Cost.

If, at any time prior to the City's approval of the final plans and specifications, the Consultant anticipates that the total construction cost will exceed the estimated construction budget, the Consultant shall immediately notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which the Consultant believes will bring the construction cost to within the estimated construction budget. The City

may either: (1) approve an increase in the amount authorized for construction; or (2) delineate a project which may be constructed for the budget amount; or (3) any combination of (1) and (2).

ARTICLE V - CITY'S OBLIGATIONS

5.1 Ownership of Documents.

Once the Consultant has received any compensation for the Professional Services performed, all documents, including but not limited to, original plans, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to the Scope of Services or Professional Services, shall be the property of the City. The City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights, whether or not the work for which they were prepared has been performed. The City's ownership entitlement arises upon payment or any partial payment for work performed and includes ownership of any and all work product completed prior to that payment. This Section shall apply whether the Consultant's Professional Services are terminated: (a) by the completion of the Project, or (b) in accordance with other provisions of this Agreement. Notwithstanding any other provision of this paragraph or Agreement, the Consultant shall have the right to make copies of all such plans, studies, sketches, drawings, computer printouts and disk files, and specifications.

Consultant shall not be responsible for damage caused by subsequent changes to or uses of the plans or specifications, where the subsequent changes or uses are not authorized or approved by Consultant, provided that the service rendered by Consultant was not a proximate cause of the damage.

5.2 Additional Consultants or Contractors.

The City reserves the right to employ, at its own expense, such additional consultants or contractors as the City deems necessary to perform work or to provide Professional Services on the Project.

5.3 Employment of City Staff.

This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Consultant employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the Consultant.

ARTICLE VI - INDEMNIFICATION

6.1 Indemnification and Hold Harmless Agreement.

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or Consultant's employees, agents and officers, arising out of any services performed involving this Agreement, except liability for Professional Services covered under Section 6.2, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its employees, agents and officers, from and against all liability. Also

covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its employees, agents, and officers, which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents, or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its employees, agents, and officers. This section in no way alters, affects or modifies the Consultant's obligations and duties under Section 4.3.4.1 herein.

6.2 Indemnification for Professional Services.

As to the Consultant's work under this Agreement and any Professional Services related thereto, the Consultant agrees to defend, indemnify, protect and hold harmless the City, its agents, officers and employees from and against any and all claims asserted, or liability established for any damages, arising from the active or passive negligent acts or omissions of the Consultant. The City may, of its own election, conduct its defense or participate in the defense of any claim related in any way to this Agreement; provided however, that the Consultant's duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of the City, its agents, officers or employees.

6.3 Duty to Defend.

The Consultant further agrees that the indemnification agreement in Section 6.1, and 6.2, and the duty to defend the City, require the Consultant to pay any costs the City incurs that are associated with enforcing these indemnification provisions, and defending any claims arising from this Agreement.

ARTICLE VII - ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

7.1 Mandatory Non-binding Mediation

If a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association or any other neutral organization agreed upon before having recourse in a court of law.

7.2 Mandatory Mediation Costs

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise.

7.3 Selection of Mediator

A single mediator that is acceptable to both Parties shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the American Arbitration Association (AAA) or any other agreed upon mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing

Party. If the mediator is selected from a list provided by AAA, the initiating party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees; a list of three requested mediators marked in preference order, and a preference for available dates.

7.3.1. If AAA is selected to coordinate the mediation (Administrator), within ten (10) working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order, after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

7.3.2. The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred, Mediator from the individual Parties' lists who is available to serve within the designated time frames.

7.3.3. If the Parties agree not to use AAA, then a mutually agreed upon mediator, date and place for the mediation shall be agreed upon.

7.4 Conduct of Mediation Sessions

Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

7.4.1. Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

7.4.2. Any agreements resulting from mediation shall be documented, in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE VIII - MISCELLANEOUS

8.1 Notices.

In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to:

George Freiha, PE
Project Manager
City of San Diego Water Department
600 B Street, Suite 700
San Diego, CA 92101

and notice to the Consultant shall be addressed to:

Curt Edwards, PE
Project Manager
4455 Murphy Canyon Road, Suite 200
San Diego, CA 92123-4379

8.2 Headings.

All article headings are for convenience only and shall not affect the interpretation of this Agreement.

8.3 Non-Assignment.

The Consultant shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

8.4 Independent Contractors.

The Consultant and any Subconsultants employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Professional Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the end results of the performance.

8.5 Consultant Principal for Professional Services.

It is understood that this Agreement is for unique Professional Services. Retention of the Consultant's Professional Services is based on the particular professional expertise of the individuals rendering the services set forth in the Scope of Services. Accordingly, portions of the described service may not be delegated to other members of the team or Subconsultants without prior written consent by the City. It is mutually agreed that Curt Edwards (Principal) is the principal person responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. In the event the Principal named above becomes unavailable for any reason, the City must be consulted as to any replacement. Further, the City reserves the right, after consultation with the Consultant, to require removal of Consultant's employees or agents.

8.6 Covenants and Conditions.

All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Consultant, shall be deemed to be both covenants and conditions.

8.7 Compliance with Controlling Law.

The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

8.8 Jurisdiction, Venue, and Attorney's Fees.

The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney's fees in addition to any other award made in such suit or proceeding.

8.9 Successors in Interest.

This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

8.10 Integration.

This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

8.11 Counterparts.

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.

8.12 No Waiver.

No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

8.13 Severability.

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

8.14 Municipal Powers.

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

8.15 Drafting Ambiguities.

The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

8.16 Signing Authority.

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, this Agreement is executed by The City of San Diego, acting by and through its Water Department Director, pursuant to Resolution No. A-200932 authorizing such execution, and by the Consultant.

Dated this 20 day of December, 2004.

THE CITY OF SAN DIEGO

By [Signature]
Frank Belock Jr.
Water Department Director

I HEREBY CERTIFY I can legally bind Pountney Psomas and that I have read all of this Agreement, this 2nd day of November, 2004.

By [Signature]
Curtis L. Edwards, PE
Vice President
364544747
Federal ID

I HEREBY APPROVE the form and legality of the foregoing Agreement this 21st day of December, 2004.

CASEY GWINN, City Attorney

By [Signature]
Michael McGowan
Deputy City Attorney

EXHIBIT A

SCOPE OF REQUIRED SERVICES

The Consultant shall provide engineering services during design, bidding, and construction phases for the rehabilitation of the Rancho Bernardo Reservoir in accordance with the Water Department CIP Guidelines and Standards. The Water Department's expectations for this project are for the Consultant to minimize the construction costs for rehabilitation through effective design for the improvements necessary to achieve another 30 plus year service life cycle and anticipating the potential issues that will confront the contractor during rehabilitation. This Scope of Services is intended to reflect a focus on the interior structural and mechanical improvements. Significant external improvements are not anticipated outside of minor piping improvements and landscape enhancements to repair the landscape damaged during construction. The Consultant is expected to utilize existing reports and previous plan set developments to develop and recommend the tasks necessary to rehabilitate the reservoir for an additional 30-years service life. Suggested tasks are summarized below.

PHASE A: Design Phase

1. Coordination with City Project Management

The Consultant shall describe their progress on the design deliverables and shall identify outstanding project issues at progress meetings with City staff (up to 9 meetings, one of which includes the project kick-off meeting). The Consultant shall prepare a simple design schedule using MS Project or Primavera indicating the complete design schedule dates. Updates shall be provided as required by the City's Project Manager. A monthly status report will be provided.

2. Public Information Program Assistance

The Consultant shall assist City staff with presentation boards or other presentation materials required to adequately describe the project to community groups, Council Committees, and other jurisdictional agencies (up to six boards). The Consultant shall also attend up to 2 community group meetings (up to 4 hours each) with City staff to support and assist City staff in responding to their concerns.

3. Investigations

The Consultant shall provide field investigations and interior investigations for the proposed rehabilitation project, visually verifying existing conditions and improvements and incorporating the numerous previous studies performed on the facility. In addition, investigations may be required to be performed during the design phase which cannot be determined at this time. The Consultant may be requested to provide additional

investigations as additional services based on the needs of the project. The following investigations are at a minimum:

3.1. Geotechnical Investigations

Geotechnical investigations shall be performed to the extent necessary to support seismic improvements and structural rehabilitations inside the reservoir.

3.2. Corrosion Control

The Corrosion survey and design shall be provided at the 75%, 100%, and Final design stages. The work shall include the following:

- Design cathodic protection system and test stations per CSD standards
- Provide cathodic protection system calculations
- Prepare plans, specifications, and estimates for the cathodic protection system as necessary for rehabilitated facility in accordance with CIP Standards and Guidelines
- Respond and incorporate review comments
- Provide bid phase support
- Provide construction phase services

3.3. Landscape Architecture Services

The landscape services shall include providing design and construction documents for revegetating areas impacted by construction within the reservoir site, the soccer park area and in the open space surrounding the facility. Work within the site will include any necessary erosion control and enhancements. Work will include irrigation systems if selected landscaping schemes require it. Work will not include any art feature, structural design, or architectural design.

Landscape submittals will be included at the 75%, 100% and Final design submittal stages.

4. Design Submittal: Seventy-five Percent (75%) Design Development

The Consultant shall advance the design to the 75% design submittal, per the Water CIP Design Guidelines. The following, at a minimum, shall be provided at the 75% Design Submittal:

4.1. Design Drawings-

- Title Sheet

- Project Notes & Index Sheet
- Abbreviations & Legend Sheet
- Mechanical (pipeline) Replacement Sheets (1 sheets @ 40' scale)
- Liner and Misc. Detail Sheets (4 sheets)
- WPCP Notes & Legend Sheet
- WPCP plans (1 sheet)
- Landscape plans (2 sheets)
- Structural plans (22 sheets)
- Corrosion Control plans (1 sheet)
- Electrical Telemetry plans (2 sheets)

4.2. 75% Cost Opinions per CIP Guidelines

4.3. 75% Specification per CIP Guidelines

The Final geotechnical report shall be provided at the 75% design.

5. Design Submittal: 100% Design Development

The Consultant shall advance the design from the 75% design to the 100% design submittal, including incorporation of City's 75% design review comments. All calculations, drawings, cost estimates, bid schedules, and specifications shall be complete per the Water CIP Design Guidelines. The following, at a minimum, shall be provided at the 100% Design Submittal:

5.1. Design Drawings-

- Title Sheet
- Project Notes & Index Sheet
- Abbreviations & Legend Sheet
- Mechanical (pipeline) Replacement Sheets (1 sheets @ 40' scale)
- Liner and Misc. Detail Sheets (4 sheets)
- WPCP Notes & Legend Sheet

- WPCP plans (1 sheet)
- Structural plans (22 sheets)
- Corrosion Control plans (1 sheet)
- Electrical Telemetry plans (2 sheets)

5.2. 100% Cost Opinions per CIP Guidelines

5.3. 100% Specifications per CIP Guidelines

6. Design Submittal: Final Design Development

Final design development shall consist of preparing bid-ready project plans and specifications for incorporation by City staff into the final bid documents. The Consultant shall incorporate City's 100% design review comments, as well as building plan check, regulatory agency, bid-ability, and constructability review comments. Final design calculations, revisions to cost estimates, or revisions to schedules with all backup information shall also be submitted. The following, at a minimum, shall be provided at the Final Design Submittal:

6.1. Design Drawings-

- Title Sheet
- Project Notes & Index Sheet
- Abbreviations & Legend Sheet
- Mechanical (pipeline) Replacement Sheets (1 sheets @ 40' scale)
- Liner and Misc. Detail Sheets (4 sheets)
- WPCP Notes & Legend Sheet
- WPCP plans (1 sheet)
- Landscape plans (2 sheets)
- Structural plans (22 sheets)
- Corrosion Control plans (1 sheet)
- Electrical Telemetry plans (2 sheets)

6.2 Final Cost Opinions per CIP Guidelines

6.3 Final Specifications per CIP Guidelines

7. Design Reviews and Approvals

Consultant shall perform QA/QC on each submittal and correct any errors prior to submitting the documents to the City for review. Consultant shall submit verifiable evidence that this QA/QC effort was done for each submittal at the time of the submittal. The verification shall include the name, title, and telephone number of the QA reviewer. The City shall perform design reviews of each submittal, and provide a copy of review comments directly to the Consultant's QA reviewer. The Consultant shall review City's comments, provide written responses to comments, and incorporate comments as agreed upon with the City. Consultant shall notify the City immediately of any design review comments that will not be incorporated, or that they believe will impact the schedule, construction budget, or their scope of work, and obtain the City's approval prior to discarding or incorporating those comments. The Consultant shall attend one (1) comment resolution meeting for each submittal except the final.

If Value Engineering, Bid-ability, or Constructability reviews are performed by the City, the Consultant will not be required to participate except to incorporate comments into the design.

8. Permitting

Permitting assistance shall be provided for the State of California Division of Safety of Dams (DSOD). All DSOD requirements shall be incorporated into the final design and the permit shall be secured prior to construction award.

PHASE B: Bid Phase

Services needed from the Consultant during the Bid Phase shall include:

- Attendance at the pre-bid conference
- As needed technical assistance for the City to respond to bidder inquiries
- Technical assistance with addenda preparation per the Water CIP Design Guidelines

The Consultant shall not be required to assist the City in bid package preparation, bid opening, bid review, or bid evaluation.

PHASE C: Construction Phase

Services needed from the Consultant per the Water CIP Design Guidelines include:

- Attendance at the pre-construction conference
- Attendance at construction progress meetings (1 person @ one meeting per week, approximately 30 minutes long plus travel)
- As needed technical review and response to RFI's (up to 50)
- Substitution requests
- Submittals
- Shop drawings (up to 40)
- Design clarifications
- Prepare final project record drawings
- Provide field inspection supported by a letter report during structural work per City PM prior approval (1 person @ one field visit per week, 6 hours per visit , for 16 weeks) .

The Consultant shall provide assistance with claims management. Field evaluation of construction and change order assistance shall not be required.

EXHIBIT B

COMPENSATION SCHEDULE

I. Professional Services Fee.

- A. The City and Consultant agree that the Professional Services Fee to be paid to Consultant shall not exceed the Contract Amount shown in the schedule below (project budget attached).

II. Compensation Schedule.

Description	Total Dollar Amount
HOURLY RATE, NOT-TO-EXCEED: Phase A -- Services During Design	\$68,758.97
HOURLY RATE, NOT-TO-EXCEED: Phase B -- Services During Bidding.	\$2,539.84
HOURLY RATE, NOT-TO-EXCEED: Phase C -- Services During Construction.	\$16,273.00
SUB TOTAL: CONSULTANT SERVICES	<u>\$87,571.81</u>
SUBCONSULTANTS FEES PLUS 5% Mark-Up	<u>\$235,114.95</u>
Misc. Reimbursable Expense	<u>\$2,300.00</u>
ADDITIONAL SERVICES	\$65,000.00
TOTAL: NOT-TO-EXCEED CONTRACT AMOUNT	<u>\$390,000.00</u>

EXHIBIT "C"

FEE SCHEDULE**I. Labor Rate.**

- A. The overhead and profit rates reflected in the total compensation multiplier cited below are being charged because the services to be performed by the Consultant under this Agreement are highly specialized. The Consultant represents that the overhead rate is their most recently audited actual overhead rate.
- B. Labor rates shall be Consultant's burdened rate for individuals or job classifications Listed on attached Schedule C-1.1.
- B. Consultant's total compensation multiplier on base labor rate is 2.70.
- C. All overtime must be pre-approved in writing by the Water Department Project Manager.
- C. Labor billing rate equals base labor rate times total compensation multiplier.

II. Staff Changes: The Water Department Project Manager must approve the assignment of staff prior to beginning a task order as well as any staff changes proposed by Consultant. The Water Department Project Manager must also approve in writing any personnel changes proposed by Consultant after Notice to Proceed has been issued.

III. Additional Subcontractors: Second-tier and pass-through subcontracting is prohibited. However, in the event that the Consultant and its approved Subconsultants lack the necessary skills or expertise to perform requested services that are within the scope of the contract, additional Subconsultants may be added to the Consultant team. In such circumstances, the Water Department Project Manager may suggest firms capable of performing the work and submit a proposal to the Consultant.

IV. Other Direct Costs.

- A. All ODCs are subject to pre-approval in writing by the Water Department Project Manager.
- B. All ODCs will be reimbursed at actual cost—no mark up shall be included.
- C. ODCs are limited to out-of-town travel (outside San Diego County), specialty printing, use of specialty computer hardware, software and project equipment not provided by the Water Department.
- D. Vehicle mileage within San Diego County may be reimbursed at \$.375 per mile for travel from Consultant's home office to Water Department facilities only. Standard commute costs are not reimbursable.
- E. Any travel and temporary housing costs will be reimbursed at cost or the Federal Government's Continental U. S. Travel Per Diem Allowances (CONUS), whichever is lower.
- F. ODCs shall not include any labor charges or *pass-throughs*.
- G. ODCs shall not include labor or costs that should be included in the firm's overhead (e.g. temporary office staff, telephone calls and faxes originating in the firm's home office,

standard computer use charges, computer hardware or software, communication devices, electronic equipment, etc.)

- H. Meals including refreshments and working lunches with Water Department staff will not be reimbursed.
- I. No equipment to be used by Water Department staff will be purchased through this Agreement. Any equipment purchased to be used by Consultant or its subcontractors will not be directly charged to this Agreement. Such purchases will be included in the appropriate firm's overhead.

V. Subconsultants.

- A. Subconsultant costs are actual costs paid to Subconsultants by Consultant. Any subsidiary company to the Consultant, performing services related to the Project, shall not qualify for treatment as third party [Subconsultant] to this Agreement.
- B. Consultant's markup on Subconsultant administration cost shall not exceed 5% of actual cost.
- C. Consultant billing rate equals Subconsultant cost plus markup.

VI. Relocation Costs: The Water Department will not pay relocation costs for Consultant staff assigned to the Agreement on a full-time or on-going basis. During the project, if staff with special skills is needed for specific tasks and those skills are not available from Consultant staff in the San Diego area, travel and temporary housing costs may be charged to the contract if those charges are pre-approved by the Water Department Project Manager and Senior Contract Specialist. Any travel and temporary housing costs will be reimbursed at cost or the Federal Government's CONUS standards, whichever is lower.

VII. Invoice Requirements: The Consultant shall submit one original invoice package and one copy with the appropriate reporting forms and supporting documentation to substantiate the labor, mileage and Other Direct Costs for both the Consultant and Subconsultants. A standard invoice format shall be developed by the Consultant anticipating project complexity and used thereafter. Timesheets, cards or logs must include a brief description of when and what work was performed memorializing the day's progress. Mileage logs must include the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. Any "Other Direct Costs" must be substantiated with receipts including a brief description for each receipt memorializing the purpose. Complete invoice packages should be sent directly to the Water Department Project Manager.

Note: Clerical support services charged directly to this task order as billable hours shall be utilized *only* for the production of specific deliverables (e.g. report formatting, editing and reproduction). Preparation of correspondence, filing and other routine administrative activities shall be considered as part of the consultant's overhead costs, which are already included in the hourly billing rates. Clerical and administrative time utilized for such purposes shall not be charged to this task order.

Economic Price Adjustment

Consultant may request an adjustment to the base labor rates in this Agreement twelve months after the effective date of the (a) Agreement, or (b) Notice To Proceed (NTP), whichever occurs later. Any such request must include supporting data, in a form satisfactory to City, subject to audit. Any adjustments to labor rates shall not exceed the percent change in the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) for the previous twelve months, and any other ceiling caps stated elsewhere in this Agreement.

Should a request for adjustment be made after a twelve month period, any subsequent request will not be considered prior to the end of the next twelve months. Under no circumstances will an adjustment to rates be made retroactively.

The formula for calculating the CPI adjusted allowable rate is:

$$\left[1 + \left(\frac{\text{Current CPI} - \text{Previous CPI}}{\text{Previous CPI}} \right) \right] \times \text{Previous Rate} = \text{Current Rate}$$

Definitions

CPI: The All Urban Consumers (CPI-U), Los Angeles-Riverside-Orange, CO, CA, All Items, shall be used.

Current CPI: The CPI-U as of the twelfth month after the effective date of this Agreement, or the NTP, whichever occurs later. When a request for rate adjustment is made after a twelve month period, the CPI-U as of the month of the request will be used. For subsequent price adjustments, the CPI-U as of the twelfth month after the prior adjustment, shall be used.

Previous CPI: The CPI-U as of the effective date of this Agreement, or the NTP, whichever occurs later. For subsequent price adjustments, the prior Current CPI, shall be used.

Previous Rate: The Agreement labor rate in effect during the previous twelve months.

Current Rate: The adjusted Agreement labor rate effective for the next twelve months.

--- End of Fee Schedule ---

EXHIBIT C-1.2
FEE SCHEDULE

Maximum Billing Rates:

- A. Maximum hourly compensation shall not exceed \$170.00/hour. Exceptions to this rate will be considered on a case-by-case basis and is subject to written pre-authorization by the Water Department Project Manager and Deputy Director, CIP Program Management Division.
- B. Hourly billing rates shall be calculated by multiplying the actual hourly salary rate of an employee by the multiplier, which includes all the rates for direct rate, overhead (including other direct and miscellaneous costs), salary burden, fringe benefits and profit.
- C. Clerical and administrative costs shall be included as part of the overhead rate. The only exception to this provision shall be clerical and administrative time utilized in the production of a specific deliverable.

Pountney Psomas				
Classification	Employee	Actual Hourly Rate	Multiplier (2.70)	Billing Rate
Principal Engineer	Peter Pountney	\$72.82	2.70	\$170.00 (max. rate)
Principal Engineer	Curtis Edwards	\$64.27	2.70	\$170.00 (max. rate)
Sr. Assoc. Engineer	Cheui Young	\$50.64	2.70	\$136.73
Assoc. Eng./Sr. PM	Sandra Russell	\$48.74	2.70	\$131.60
Assoc. Eng./Sr. PM	James Bliss	\$48.98	2.70	\$132.25
Project Engineer	Michael Pollard	\$41.35	2.70	\$111.65
Design Engineer	Scott Hamlin	\$31.00	2.70	\$83.70
Assistant Engineer	Sean Diaz	\$25.46	2.70	\$68.74
Staff Engineer	Ken Wright	\$30.57	2.70	\$82.54
CADD Drafter, Sr.	Gin Yen	\$27.87	2.70	\$75.25
CADD Drafter, Sr.	Paula Ethridge	\$26.44	2.70	\$71.39
Cadd/Drafter Jr.	Jose Sanchez	\$20.16	2.70	\$54.43
Word processor	Michaela Edelhauser	\$20.81	2.70	\$56.19
Word processor	Carol Caves	\$20.77	2.70	\$56.08
Word processor	Christopher Corbelli	\$10.00	2.70	\$27.00

Subconsultants

Simon Wong				
Classification	Employee	Actual Hourly Rate	Multiplier ()	Billing Rate
Principal Engineer				\$170.00
Sr. Structural Eng				\$135.00
Sr. Engineer I				\$99.27
Sr. Engineer II				\$94.31
Assoc. Engineer				\$93.60
Sr. CADD Tech				\$88.09

GENTERRA CONSULTANTS, INC.				
Classification	Employee	Actual Hourly Rate	Multiplier ()	Billing Rate
Principal Engineer				\$170.00
Project Engineer				\$120.00
Office Assistant				\$65.00

CORRPRO				
Classification	Employee	Actual Hourly Rate	Multiplier (*)	Billing Rate
Sr. Engineer				\$125.00
Corrosion Engineer				\$110.00
Drafter				\$65.00
Clerical				\$55.00

MORAES/PHAM ASSOCIATES				
Classification	Employee	Actual Hourly Rate	Multiplier ()	Billing Rate
Principal				\$115.00
Engineer				\$95.00
CAD				\$85.00

**Exhibit D
RANCHO BERNARDO RESERVOIR
PROJECT SCHEDULE**

<u>Task Description</u>	<u>Calendar Days to Complete</u>	<u>Days after NTP</u>	<u>Date</u>
NTP	0	0	December 13, 2004
Investigations	60	60	February 14, 2005
75% Submittal	30	90	March 16, 2005
City Review of 75%	28	118	April 13, 2005
90% PS&E (includes QC)	21	139	May 4, 2005
City Review of 90%	28	167	June 1, 2005
100% PS&E (includes QC)	16	183	June 17, 2005
Bid Phase	120	303	October 15, 2005
Construction Phase	365	668	October 15, 2006