

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Allan L. Roeder
Dept: Interim City Manager
Subject: AWARD OF A CONTRACT TO
KLEINFELDER FOR PROFESSIONAL
ENGINEERING SERVICES FOR THE
REPAIR AND REHABILITATION OF FOUR
FULLY BURIED RESERVOIRS

From: William E. Murray
Dept: Public Works
Date: July 14, 2015

OBJECTIVE

To recommend that the City Council award a contract to Kleinfelder for professional engineering services for repair and rehabilitation of four (4) fully buried reservoirs.

BACKGROUND

The City of Garden Grove has eight potable water reservoirs located at five different sites that range from 4 to 10 million gallons in storage. Of the eight reservoirs, four are fully buried and four are partially buried. The City's water distribution system relies on these storage facilities to help equalize fluctuations between supply and demand, to supply sufficient water for firefighting, and to meet demands during an emergency or an unplanned outage of a major source of supply. All the reservoirs are constructed of reinforced or pre-stressed concrete and are between 12 to 42 years old. Condition Evaluation and Assessment of these reservoirs was completed in December 2013 by Simon Wong Engineering, which included a structural and seismic assessment, corrosion assessment, and mechanical and security assessment. The Condition Evaluation and Assessment provided lists of recommended repairs and rehabilitation for each reservoir with prioritization. Based on these recommendations, staff is seeking engineering and design services as part of Phase I of this project to generate specifications, plans and other necessary construction documents for the repair and rehabilitation of the four (4) fully buried reservoirs.

DISCUSSION

Staff requested proposals from four (4) firms to provide professional engineering services. Out of those four (4), two (2) consultants submitted proposals. A panel of three members rated the submitted proposals on the basis of qualifications without considering cost. Based on evaluation results, Kleinfelder rated highest in qualifications and its ability to provide professional engineering services for this project. The following is a summary of the ratings with the highest total being the most qualified:

AWARD OF CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES
TO KLEINFELDER FOR ENGINEERING SERVICES FOR REPAIR AND
REHABILITATION OF FOUR (4) FULLY BURIED WATER RESERVOIR

July 14, 2015

Page 2

	Kleinfelder San Diego, CA	Psomas Santa Ana, CA
<i>Rater A</i>	166.0	148.5
<i>Rater B</i>	163.0	154.0
<i>Rater C</i>	148.0	130.5
Totals	477.0	433.0

Upon selection of the most qualified firm, Water Services staff interviewed Kleinfelder and negotiated an agreement for its services.

FINANCIAL IMPACT

There is no impact to the General Fund. This project is included in the 2015-2016 Capital Improvement Budget, and will be financed with Water Funds, in the amount of \$557,300.

RECOMMENDATION

It is recommended that the City Council:

- Award a contract to Kleinfelder for the professional engineering services for repair and rehabilitation of four (4) fully buried reservoirs, in the amount of \$557,300; and
- Authorize the Interim City Manager to execute the agreement on behalf of the City and make minor modifications as appropriate thereto.

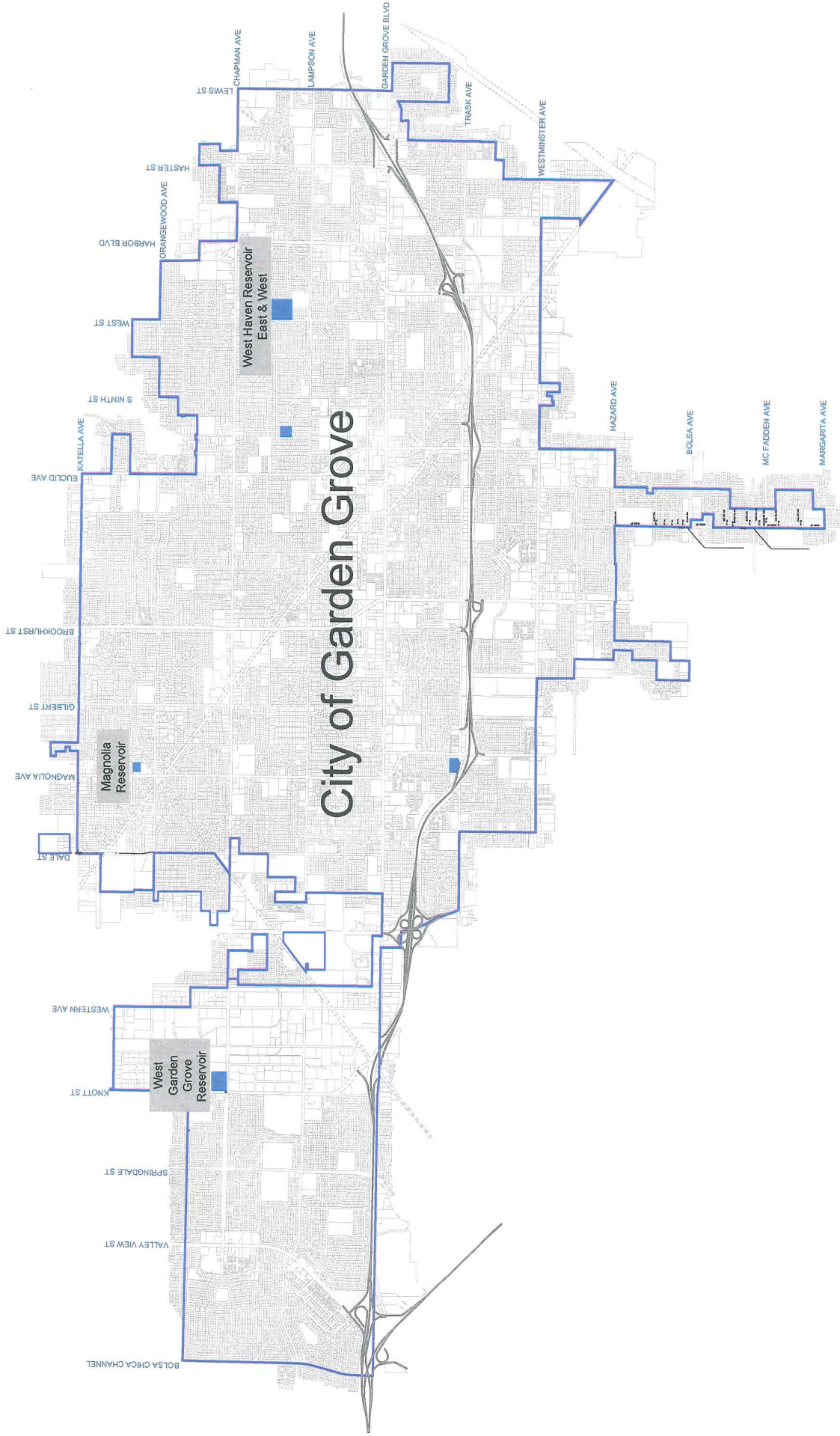

WILLIAM E. MURRAY, P.E.
Public Works Director

By: 
Rebecca Li, P.E.
Associate Engineer

Recommended for Approval


Allan L. Roeder
Interim City Manager

Attachments: 1) Location Map
2) Professional Services Agreement



City of Garden Grove

■ Reservoir Location

Attachment 1:
Location Map

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made and entered into, to be effective the 14th day of July, 2015, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "City," and Kleinfelder, a San Diego Corporation, hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, City has determined that there is a need for engineering and design services for the repair and rehabilitation of four fully buried water storage reservoirs – phase I project (the "Project");

WHEREAS, City desires to retain Consultant to provide such services; and

WHEREAS, Consultant is qualified by virtue of experience, training, education, and expertise to perform the professional services required by this Agreement and has agreed to provide such services.

NOW, THEREFORE, in consideration of the promises and mutual benefits which will result to the Parties in carrying out the terms of this Agreement, it is mutually agreed as follows:

AGREEMENT

I. SCOPE OF WORK

City agrees to retain Consultant, and Consultant agrees to perform the services set forth in the Scope of Services described in Exhibit "A", attached hereto and by reference made a part of this Agreement (hereinafter the "Services"). Consultant agrees that its provision of Services under this Agreement shall be within accepted standards within the profession, and its specialized services shall be in accordance with customary and usual practices in Consultant's profession. By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

II. TERM

This Agreement shall be effective as of the date first set forth above. This Agreement shall commence upon the effective date of this Agreement, and shall remain and continue in effect until tasks described herein are completed unless otherwise terminated prior to this date pursuant to the provisions of this Agreement.

III. FEES

A. Accounting Records

Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Upon request of City, Consultant shall provide City with all records pertaining to this Agreement.

B. Total Payment

The Parties agree that Consultant shall bill for the Services provided by Consultant to City on an hourly basis and in accordance with the charges and fee schedule attached as Exhibit "B," except as otherwise set forth herein, provided compensation under this Agreement shall not exceed \$557,300.

C. Monthly Payment

1. City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment, as set forth in Exhibit "B," attached hereto based upon actual time spent providing the services outlined in this Agreement. Consultant shall submit to City monthly or periodic statements requesting payment. Such requests shall be based upon the amount and value of the Services performed by Consultant under this Agreement and shall be prepared by Consultant and accompanied by such reporting data including a detailed breakdown of all costs incurred and tasks performed during the period covered by the statement, as may be required by City. Invoices shall be submitted on or about the first business day of each month, for Services provided the prior month. City shall use reasonable efforts to make payment to Consultant within forty-five (45) days after the date of the invoice or as soon thereafter as reasonably practicable. If City determines that the approved written Scope of Work under this Agreement or any specified task hereunder is incomplete, the City Manager, or his or her designee, shall notify Consultant and may withhold the payment amount for the unfinished work accordingly.

2. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager.

IV. TERMINATION

City may terminate this Agreement for its convenience at any time, with or without cause, in whole or in part, upon giving Consultant thirty (30) days written notice. Upon said notice, City shall pay Consultant its allowable costs incurred to date of termination and those allowable costs determined by City to be reasonably necessary to effect such termination. Upon receipt of said notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City terminates a portion of this Agreement, such termination shall not make void or invalidate the remainder of this Agreement. Thereafter, Consultant shall have no further claims against City under this Agreement. Upon termination of the Agreement pursuant to this Section, Consultant will submit an invoice to City pursuant to Section 3. Consultant may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

V. DEFAULT OF CONSULTANT

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event Consultant is in default, except as provided for in Section XXI, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate the Agreement immediately upon written notice to Consultant.

B. If the City Manager, or his/her designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall notify Consultant in writing of such default. Consultant shall have ten (10) days to cure the default by rendering a satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default including, but not limited to, procurement costs of the same or similar services defaulted by Consultant under this Agreement.

VI. LEGAL RELATIONSHIP BETWEEN THE PARTIES

A. The legal relationship between the Parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers, employees, or agents. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set

forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents for injury or sickness arising out of performing Services hereunder. If for any reason, any court or governmental agency determines that City has financial obligations, other than pursuant to Section III herein, of any nature related to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for all such financial obligations.

VII. MODIFICATIONS AND AMENDMENTS TO AGREEMENT

No modification or amendment of this Agreement or any of the provisions hereof shall be effective for any purpose unless set forth in writing signed by duly authorized representatives of both Parties.

VIII. ASSIGNMENTS AND SUBCONTRACTING

The experience, knowledge, capability, and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Consultant may not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written approval of City. Except as otherwise expressly provided in the Scope of Services (Exhibit "A"), Consultant shall not contract with any other person or entity to perform the Services required without written approval of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant as provided for in Section III.

IX. SUCCESSORS IN INTEREST

This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

X. THIRD PARTY BENEFICIARY

Except as may be specifically provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as third-party beneficiary or otherwise, upon any entity or person not a party hereto.

XI. INSURANCE

A. Insurance Required

Consultant shall procure and maintain the insurance described herein for the duration of this Agreement, or as otherwise specified herein, against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees. Insurance required herein shall be provided by a reputable insurance company in good standing with the State of California and having a minimum A.M. Best's Guide Rating of A-, Class VII or better. City will require Consultant to substitute any insurer whose rating drops below the levels specified herein. Such substitution shall occur within twenty (20) days of written notice to Consultant by City.

Consultant shall provide to City certificates of insurance in a form acceptable to City indicating the deductible or self-retention amounts and the expiration date of the policy, and shall provide renewal certificates not less than ten (10) days prior to the expiration of each policy term. The certificates of insurance shall specifically identify this Agreement and shall contain express conditions that City is to be given at least thirty (30) days advance written notice of any material modification in or termination of insurance. Such insurance shall be primary to and not contributing with any other insurance maintained by City of Garden Grove and/or its respective councilmembers, officers, officials, employees, agents, and volunteers. The insurance shall name the City of Garden Grove and its respective councilmembers, officers, officials, employees, agents and volunteers as additional insureds by endorsement to the insurance policies. Except as expressly authorized herein, all insurance shall be on an occurrence basis.

1. Errors and Omissions Insurance

Consultant shall maintain in full force and effect throughout the term of this Agreement, standard industry form professional negligence errors and omissions insurance coverage in an amount of not less than One Million Dollars (\$1,000,000.00) per claim or per occurrence and Two Million Dollars (\$2,000,000.00) aggregate, in accordance with the provisions of this Section. If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the

prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall be obtained for the required period to ensure coverage for the prior acts of Consultant during the course of performing the Services under the terms of this Agreement.

2. Workers' Compensation

Consultant shall obtain and maintain, during the term of this Agreement, Workers' Compensation Employer's Liability Insurance in the statutory amount as required by state law. Such worker's compensation insurance shall be endorsed to provide for a waiver of subrogation against City of Garden Grove, its respective councilmembers, officers, officials, agents, employees, and volunteers.

B. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability:

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

2. Automobile Liability:

\$1,000,000 per accident for bodily injury combined single limit. **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

3. Employer Liability:

\$1,000,000 per accident for bodily injury or disease. (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the option of the Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Garden Grove, and its councilmembers, officials, officers, employees, agents and volunteers, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses, or Consultant shall otherwise provide an alternative satisfactory to the Risk Manager.

D. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Garden Grove and its respective councilmembers, officers, officials, employees, agents and volunteers are to be covered as insureds with respect to: liability arising out of activities and work performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned occupied or used by Consultant; and automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Garden Grove Sanitary District, the City of Garden Grove, the Garden Grove Agency for Community Development and their respective councilmembers, board members, officers, officials, employees, agents, and volunteers.

2. For any claims related to this Agreement, Consultant's coverage shall be primary insurance as respects the City and its councilmembers, officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by Garden Grove Sanitary District, the City of Garden Grove, and their respective councilmembers, board members, officers, officials, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties shall not affect coverage provided to the City of Garden Grove and its respective councilmembers, board members, officers, officials, employees, agents, and volunteers.

4. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been provided to City.

6. Consultant agrees to ensure that subcontractors, and any other parties involved with the project who are brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.

E. Verification of Coverage

Consultant shall furnish City with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before work commences.

If CONSULTANT maintains higher insurance limits than the minimums shown above, CONSULTANT shall provide coverage for the higher insurance limits otherwise maintained by the CONSULTANT

XII. INDEMNITY

A. Indemnification

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless the City of Garden Grove and its respective councilmembers, officers, officials, employees, agents, and volunteers, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liability, claims, judgments, costs, and demands (collectively, "Claims"), including Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless or willful performance of or failure to perform any term, provision, covenant or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness or willful misconduct of the City of Garden Grove and its councilmembers, officers, directors, officials, employees, or agents.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant will defend with legal counsel

reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim may "arise out of, pertain to, or relate to" Indemnified Claims shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness or willful misconduct of Consultant to any extent, then City will reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys' fees, expert fees, litigation costs and expenses as were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant's liability for indemnification hereunder is in addition to any liability Consultant may have to City for a breach by Consultant of any of the provisions of this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder. The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement.

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

XIII. COMPLIANCE WITH LAW

A. Consultant certifies by the execution of this Agreement the following: that it pays employees not less than the minimum wage as defined by law and that it does not discriminate in its employment with regard to race, color, religion, sex, age, marital status, ancestry, or national origin; that Consultant is in compliance with all federal and state laws, local directives, and executive orders regarding non-discrimination in employment; and that Consultant agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

B. Consultant shall keep itself informed of State and Federal laws and regulations, which in any manner affect those employed by it or in any way affect the performance of its Services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws and regulations. The City of Garden Grove and its respective councilmembers, officers, employees, and agents shall not be liable at law or in equity for Consultant's failure to comply with such laws and regulations.

XIV. LICENSES AND QUALIFICATIONS

Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval, which is legally required for Consultant to perform Services under this Agreement.

XV. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTS

A. All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors shall not without written authorization from the City Manager or unless requested by City's Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the Services performed under this Agreement or relating to any project or property location within City. Response to a subpoena or court order shall not be considered "voluntary" for the purposes of this Section, provided Consultant gives City proper notice of such subpoena or court order. Consultant shall properly notify City of any summons, complaints, subpoenas, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery requests received by Consultant, its officers, employees, agents or subcontractors, related to Services performed pursuant to this Agreement. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding, the cost of which shall be borne by City. Consultant agrees to cooperate fully with City and to provide City with an opportunity to review and respond to discovery requests provided by Consultant, arising out of Services performed pursuant to this Agreement. However, City's right to review any such request or response does not imply or mean City has the right to control, direct, write or rewrite said response.

B. The documents and study materials for this project shall become the property of City upon the termination or completion of the work. Consultant agrees to furnish to City copies of all memoranda, correspondence, computation, and study materials in its files pertaining to the work described in this Agreement, which is requested in writing by City.

XVI. INTERPRETED UNDER LAWS OF THE STATE OF CALIFORNIA

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be

employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof. Venue for any litigation concerning this Agreement shall be in the Superior Court for the County of Orange, California.

XVII. ATTORNEYS' FEES

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which they may be entitled.

XVIII. WAIVER

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

XIX. NOTICES

All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered, sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by electronic transmission, and shall be deemed received upon the earlier of: (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by electronic transmission. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications shall be addressed as follows:

To City: City of Garden Grove
13802 Newhope Street
Garden Grove, CA 92843
Attention: Project Engineer

To Consultant: Kleinfelder
550 West C Street, Suite 1200,
San Diego, CA 92101
Attention: Eric Ng, PE, SE

Either Party may, by written notice to the other, designate a different address, which shall be substituted for that specified above.

XX. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements, representations, and understandings, if any, made by or among the parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both parties hereto, or their respective successors, assigns, or grantees.

XXI. FORCE MAJEURE

If either party shall be delayed or prevented from the performance of any service under this Agreement by reason of acts of God, strikes, lockouts, labor troubles, restrictive governmental laws or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of delay, and the period for performance of any such act shall be extended for a period equivalent to the period of such delay.

XXII. TIME IS OF THE ESSENCE

The Parties agree that time is of the essence of this Agreement with respect to the deadlines set forth herein.

XXIII. SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be invalid under the applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement.

XXIV. PROHIBITED INTERESTS

Consultant covenants that, for the term of this Agreement, no Board Member, official, officer or employee of City during his/her tenure in office/employment, or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant warrants that it has not given or paid and will not give or pay any third party money or other consideration for obtaining this Agreement.

XXV. SCOPE CHANGES

In the event of a change in the scope of the proposed project, as requested by City, the Parties hereto shall execute an addendum to this Agreement, setting forth, with particularity, all terms of the new Agreement, including but not limited to any additional Consultant's fees.

XXVI. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of the City or City of Garden Grove shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

XXVII. AGREEMENT EXECUTION AUTHORIZATION

Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity for which he or she is executing this Agreement.

XXVIII. RECITALS

The Recitals above are hereby incorporated into this section as though fully set forth herein and each party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

IN WITNESS WHEREOF, this Agreement has been executed in the name of City, by its officers thereunto duly authorized, and Consultant as of the day and year first above written.

CITY OF GARDEN GROVE

By: _____
Allan L. Roeder
Interim City Manager

ATTEST:

By: _____
Kathy Bailor
City Clerk

Kleinfelder

By:



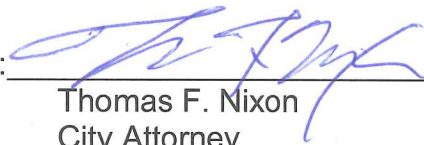
Simon Wong, PE, SE
Vice President

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a Partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

Woodruff, Spradlin & Smart

By:



Thomas F. Nixon
City Attorney

CORPORATION
SEAL

EXHIBIT A

SCOPE OF SERVICES

SCOPE OF WORK

Our proposed Scope of Work is presented below and includes the tasks listed in the City of Garden Grove (City)'s RFP dated March 17, 2015, including additional items that **Kleinfelder|Simon Wong Engineering (KLF|SWE)** utilizes to define the scope of services to be completed for this project included as sub-tasks.

KLF|SWE's Eric Ng, PE, SE will work closely with City staff to adapt our standard project management tools for cost-tracking, schedule, budget, progress reports, and communication to meet the City's format and standards of practice. As the City's Project Manager, Mr. Ng is a hands-on engineer, manager and mentor to staff, and thus, will be actively involved in all phases of field investigation, design, schedule for deliverables, internal QA/QC, invoicing, meeting agendas and minutes, management of subconsultants, meeting contractual obligations, communications with the City, and project closeout. Mr. Ng provides the City with his personal pledge to the percentage commitment of each team member to meet the City's goals.

After carefully reviewing the scope of work as presented in the RFP, we are proposing the following modifications to the sequence of work or work items for a more efficient workflow.

Scope Modification Recommendations:

- The scope of work item shown in the final design for "all necessary research, surveying and geotechnical investigation as required for completing design work" has been moved from the Final Engineering Task into the Preliminary Design Report (PDR) Task due to the necessity of this information required to complete the PDR.
- In order to reduce the chronological time frame for the design process, KLF|SWE suggests that the City might consider including the 25% design drawings (with a select number of drawings) during the PDR Task. As such, the City could review and approve how repairs will be presented in the final drawings. The design team could move directly to 60% complete design after the approval of the PDR.

Task I – Project Management, Meetings, and Coordination

This task includes management of the design team, coordination with the City's Project Manager, meetings and conference calls, preparation of meeting agendas and meeting minutes, an allowance of time to meet/coordinate with the City's Project Manager, and implement project controls. The effort for these items will be distributed within the task under which they will be executed and includes the following pre-design and design meetings:

- Kick-off Meeting
- Site visit during the data review phase
- Two meetings during the Preliminary Design Report phase
- Two to three meetings during Final Engineering design phase

Task II – Preliminary Design Report (PDR)

The Kleinfelder team will thoroughly review the existing layout, physical conditions and available data for each reservoir site including record drawings, shop drawings, past investigations, and other available information and reports. From our efforts during the preparation of the December 2013 "City of Garden Grove Condition Assessment of Eight Concrete Reservoirs, we are intimately familiar with the recommendations for cleaning, repairs, modifications and/or rehabilitation required for these reservoirs. The team will provide additional investigations for field surveying and a desktop geotechnical study with sampling of proposed backfill where necessary, especially around West Haven reservoirs. The PDR will be prepared to include a detailed discussion of all proposed repairs, modifications and/or rehabilitation, schedule of design and construction, site plans with pertinent cross sections, and estimated costs.

1. **Kick-off Meeting:** Establish lines of communication/verify scope and intent of service required.
2. **Data Review:** Includes review of record drawings, previous reports, and other available information for each reservoir. Having performed the previous condition assessment of these reservoirs, we are uniquely familiar with the current condition and recommendations of each reservoir, which will minimize the effort needed during the review phase. The data review phase will include one site meeting to be coordinated with the City's Water System Operation and Maintenance team, at which time access to the reservoirs will be required.
3. **Geotechnical Investigation:** A desktop study will be performed to identify the soil types and seismic parameters to be used in the structural calculations. Two hand augered soil samples from a maximum of four-foot depth holes will be analyzed for moisture and density, and compaction characteristics. The geotechnical engineer will obtain groundwater depth reading from the existing monitoring wells for West Garden Grove reservoir. A technical memorandum will be the deliverable for the geotechnical investigation.
4. **Field Survey:** Field shots will be collected at each reservoir site to assist with the preparation of the overall site plans and provide a preliminary record of locations of facilities that might be impacted by the construction. Information from each site to be collected include:
 - a. **West Haven Reservoirs Site:** Detailed field information will be acquired to define the existing ground surface over the existing reservoirs as well as the location of existing improvements within 10 feet of the reservoir perimeter. Additionally, field locations will be collected within pump station site fencing in the surrounding area of the reservoirs, which include pump building corners, vent and access hatch locations, boundaries of paved/turf areas, and other improvements in the near vicinity of the reservoirs.
 - b. **Magnolia Reservoir Site:** Field information will be limited to identifying the perimeter of the concrete walk around the reservoir, pedestrian walkways leading towards the reservoir, vent/access points, and the four corners of the tennis courts.
 - c. **West Garden Reservoir Site:** Detailed field information will be acquired of overall concrete surface, removable features (tennis court fence poles, tennis net standards, light poles, basketball board and hoop supports, hockey rink sidewalls), on-site pump station, monitoring wells, and access/vent locations. An all-encompassing survey data collection will be provided by the Contractor's site verification prior to the start of construction.
5. **Preliminary Design Report:** The PDR phase will combine the existing record information and data acquired for field investigations and recommend the repair/rehabilitation methods to be included in final engineering. This task includes two meetings, one for the review of the draft PDR comments and one to present the final PDR to the City. The PDR will be a compilation of the following information.
 - a. Existing Background and Purpose
 - b. Site Plan (includes civil and survey work)
 - c. Geotechnical Summary
 - seismic factors
 - soil structure behavior
 - soil conditions and compaction requirements at the West Haven site
 - groundwater conditions at West Garden site
 - d. Structural Repairs/Rehabilitation Methods/Seismic Upgrade
 - Basis of Design Assumption
 - Roof to wall joint repair
 - Roof crack repair
 - Seismic curb

- Floor slab joint material
 - Rust spots/rebar repair
 - Wall crack repair
 - Bolt removal and repair
 - e. Mechanical
 - Fall protection options for interior ladder
 - Bolts and hardware replacement
 - Discussion of valve replacement
 - f. Corrosion
 - General repairs
 - Surface preparation and coatings
6. **Deliverables:** The PDR will have two submissions, one draft and one final submission.
- a. **Draft PDR:** Prepare five hard copies of the report and submit to the City. KLF|SWE’s Project Manager and Assistant Project Manager to meet with the City to discuss and review comments and responses from the draft report submittal.
 - b. **Final PDR:** Incorporate and address all comments and responses from the draft report submittal. Prepare five copies of the final report and submit to the City including the approved comments and responses from the draft submittal.

Task III – Final Engineering

The design process will consist of incorporating the information generated in the PDR into a complete set of construction documents for the repair and rehabilitation of each concrete reservoir that will be submitted to the City in accordance with the sub-tasks detailed below. Each reservoir and reservoir site will be developed as a standalone bid package in order to provide flexibility for bidding and construction of the repairs and improvements, as well as to perform the construction in periods of lower water demand. Each submittal package will be processed through our internal QA/QC process prior to submittal of the package to the City.

1. **25-Percent Design Submittal:** The 25-percent design submittal shall include preliminary site plans for each reservoir and reservoir site detailing structural modifications, site modifications, mechanical modifications, basic sectional views, and any other details that are pertinent to each reservoir repair.
2. **Final Engineering Design:** Shall include 60, 90, and 100-percent engineering design stages, including performance of all necessary research, surveying, and geotechnical investigation as required to complete design work. Six sets of submittals for each design stage will be provided to the City. We anticipate that the construction plan set will include the following drawings.

Drawings Sheet Number/Description

1. G-1.1 Title Sheet
2. G-1.2 General Notes, Abbreviations, Symbols, Drawing List
3. C-1.1. Staging Plan/Constraints Plan
4. C-1.2 Site Plan
5. M-1.1 Mechanical Details
6. M-1.2 Mechanical Details
7. CP-1.1 Corrosion Protection Notes
8. CP-1.2 Corrosion Protection Details
9. S-1.1 General Notes
10. S-1.2 General Notes

11. S-1.3 Special Inspection Notes
 12. S-1.4 Structural Typical Details
 13. S-1.5 Structural Typical Details
 14. S- 2.1 Foundation Plan
 15. S-2.2 Roof Plan
 16. S-3.1 Section
 17. S-4.1 Details
 18. S-4.2 Details
 19. S-4.3 Details
 20. S-4.4 Details
- a. **60-Percent Design Submittal:** Using the City approved PDR, prepare 60-percent complete plans and submit six sets of the 60-percent full size progress plans and specifications to the City for review and comment. A spreadsheet of the City's comments will be prepared at the 60-percent review phase including the design team's responses to City's comments. An Opinion of Probable Construction Cost updated to the 60-percent plans will be included in the submittal.
 - b. **90-Percent Design Submittal:** Meet with the City to discuss comments and responses from the 60-percent submittal. Incorporate and address the 60-percent submittal review comments and prepare 90-percent complete plans. Submit six sets of the 90-percent full size progress plans and complete specifications to the City for review and comment along including a copy of the comments/responses spreadsheet from the 60-percent submittal. Subsequently, a spreadsheet of the City's comments will be prepared for the 90-percent review with the design team's responses to those comments. An Opinion of Probable Construction Cost updated to the 90-percent plans will be included in the submittal.
 - c. **100-Percent Design Submittal:** Meet with City to discuss the comments and responses from the 90-percent plan submittal. Incorporate and address review comments from the 90-percent submittal, prepare 100-percent plans and submit six sets of the 100-percent full size progress plans and complete specifications to the City for review and comment along with a copy of the comments/responses spreadsheet from the 90-percent submittal. A spreadsheet of the City's comments will be prepared for the 100-percent review with the design team's responses to those comments. An Opinion of Probable Construction Cost updated to the 100-percent plans will be included in the submittal.
3. **Agency Coordination:** KLF|SWE will coordinate and work with City staff, including in assistance to obtain all necessary permits and clearances from the City departments, DPH, and/or other outside regulatory and utility agencies. This assistance is defined as completing permit applications, providing exhibits, or other information for submission of a completed permit application. The City will be responsible for all permit, application, or plan review fees from the jurisdictional agencies. KLF|SWE will provide a not-to-exceed allowance for this sub-task in our man-hours and fee estimate.

Task IV – Bidding Services

1. **Bidding Services:** Provide assistance during the bidding process.
 - a. Respond in writing to Contractor's Request for Clarifications
 - b. Preparation of addendums, as required
 - c. Attendance of Pre-Bid Meeting, as required
 - d. Assisting the City in reviewing bids for completeness and accuracy

Task V – Construction Services

1. **Construction Support Services:** KLF|SWE will provide the following construction support services.
 - a. Attend pre-construction and progress meetings
 - b. Perform review of Contractors shop drawing submittals. It is presumed that the Contractor will comply with designated submittal requirements and submit only complete information for submittals.
 - Includes a maximum of 30 first submittals, 10 second submittals, 3 third submittals.
 - c. Respond to Request for Information (RFIs) during the construction period.
 - Includes a maximum of 20 RFIs are included in man-hours/fee estimate.
 - d. Review Contractor's change order requests and prepare change orders, as required.
 - Includes an allowance for two change orders.
 - e. Prepare cost estimates for additional items of work, as needed.
 - Includes an allowance of eight project engineer man-hours is included.
 - f. Attend two progress meetings during the construction period for each reservoir. The construction period is assumed to be an average of 2-3 months for each reservoir.
 - Includes a four hour per meeting allowance for the Project and Assistance Project Managers to attend progress meetings.
2. **Inspection Services:** Provide full time resident engineer inspection services throughout all phases of construction to ensure compliance with the specified local, state, federal standards, and other applicable standards and codes. It is assumed that the actual time for construction will occur over a period of eight months and that the construction of the reservoirs will not necessarily take place in consecutive months. We will ensure that the proper construction documentation is maintained throughout the life of the project.
3. **Record Drawings:** Complete and accurate construction documentation will be maintained throughout the life of the project. Once we receive the City approved Contractor's redline markups of the construction plans, we will incorporate and prepare for submittal of record drawing mylars to the City.

Final Deliverables by Consultant

1. **Final Mylars:** Prepare and submit two sets of plans (prints and mylars reverse read). Drawings shall be on 24 inch by 36 inch at 40 scale plan view, and details and sections shall be 20 scale or less. All drawings will conform to City of Garden Grove standards and will be signed and stamped by a registered civil engineer in the state of California.
2. **Final Project Specifications and Estimates:** Prepare and submit final project specifications with original signature and stamp by a registered civil engineer in the state of California. Submit two sets of projects specifications, one original set unbound, and one bound set copy.
3. **Final Opinion of Probable Construction Cost (OPCC):** Prepare and submit final OPCC cost estimates.
4. **Electronic Files:** Provide the City with a CD including project plans (AutoCAD format), project specifications (Microsoft Word format), and Engineer's cost estimate (Microsoft Excel format).
5. **Final Design Notebook:** Provide the City with two copies of the project design notebook. The notebook will include all pertinent correspondence, calculations, quantity and cost estimate, including signed and stamped by a registered engineer in the state of California.

Assumptions and Exceptions

Assumptions: The following assumptions were made for the preparation of this proposal.

- The condition of the reservoirs has not changed materially since the condition assessment was performed in 2013 and the condition of the reservoirs are consistent with what has been specified in the report.
- The entire floors of the reservoir were not visible during the condition assessment phase. Therefore, the portions of the floor not visible are assumed to be similar in condition to those sections that were observable.
- Field measurements nor testing (non-destructive or destructive) related to the existing conditions have not been performed on the reservoirs. Record drawing information will be relied upon to prepare the construction documents for this project.
- A complete soils investigation has not been performed for on this project. The information obtained from a desktop geotechnical study will be used to determine the soil characterization and seismic design parameters for this project.

Exceptions: Not included in the scope of work are:

- Complete geotechnical investigation
- Removing the sediment from the floors
- Diving the reservoir
- Any item not specifically mentioned in the scope of work above
- Electronic files for the tank base plans including piping connections to the reservoir and appurtenances to be provided by the City

EXHIBIT B

SCHEDULE OF PAYMENT

LABOR FEE
Garden Grove Repair and Rehabilitation

TASKS	KLEISWE										SUBCONSULTANTS					TOTAL TASK FEE											
											VES/US/																
											KOP																
LABOR CATEGORY																SUB TOTAL HOURS	ODCs										
13 - Sr. Principal Prof./S.D.I	15 - Executive/Manager	10 - Project Professional I	10 - Project Professional II	9 - Senior CAD Designer	9 - Staff Professional II	7 - Project Corros Specialist	12 - Project Manager III	7 - Project Administrator I	5 - Administrative II	8 - CAD Operator	9 - Staff Professional II	Project/Corrosion Manager		Senior CAD Technician		Administrative Assistant		Surveyor		Principal Engineer/Scientist/Geologist II		Resident Inspector		Administrative IV			
Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	Regular Time	
\$210.00	\$250.00	\$145.00	\$135.00	\$150.00	\$125.00	\$70.00	\$210.00	\$73.00	\$73.00	\$112.00	\$125.00	\$30.00	\$30.00	\$85.00	\$0.00	\$0.00	\$70.00	\$0.00	\$0.00	\$224.00	\$0.00	\$142.00	\$0.00	\$0.00	\$0.00		
8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8		
\$4,200.00	\$2,000.00	\$1,160.00	\$1,065.00	\$1,200.00	\$1,000.00	\$4,900.00	\$1,040.00	\$584.00	\$584.00	\$672.00	\$1,250.00	\$171.60	\$171.60	\$584.00	\$0.00	\$0.00	\$154.00	\$17,800.00	\$250.00	\$224.00	\$0.00	\$142.00	\$0.00	\$0.00	\$0.00		
TASK 1 - Proj. Mgmt, Mtns. and Coord.																											
1. PDR Meetings (Kick-off, Site Visit, 2 review)																											
2. Data review																											
3. Desktop Geotechnical Investigation/Samples																											
4. Field Survey																											
5. PDR																											
6. Deliverables - Draft																											
7. Deliverables - Final																											
TASK 2 - Preliminary Design Report (PDR)																											
TASK 3 - Final Engineering																											
1. 25-Percent Submittal																											
2. Final Engineering Design																											
a. 60-percent submittal																											
b. 90-percent submittal																											
c. 100-percent submittal																											
3. Agency Coordination																											
TASK 4 LABOUR HOURS																											
TASK 4 LOADED LABOR FEE																											
TASK 5 - Bidding Services																											
1. Bidding Services																											
a. Respond to RFIs																											
b. Prepare addendum as required (allowance)																											
c. Attend Pre-Bid Meeting																											
d. Assist in review of Contractor's Bids																											
TASK 6 LABOUR HOURS																											
TASK 6 LOADED LABOR FEE																											
TASK 7 - Construction Services																											
1. Construction Support Services																											
a. Attend Pre-Construction Meetings																											
b. Review shop drawings (02-16, 12-2nd, 3-10)																											
c. Respond to RFIs (02-10)																											
d. Prepare OPRC for contractor																											
e. Prepare OPRC for additional work items																											
f. Coord. Bi-weekly Meetings (2/28/2020)																											
g. Record Drawings																											
h. Record Drawings																											
TASK 8 LABOUR HOURS																											
TASK 8 LOADED LABOR FEE																											
TASK 9 - Final Design Deliverables																											
1. Final Mixes																											
2. Final Specifications																											
3. Final OFCC																											
4. Electronic Files																											
TASK 9 LABOUR HOURS																											
TASK 9 LOADED LABOR FEE																											
PROJECT TOTAL HOURS																											
PROJECT TOTAL LOADED LABOR FEE																											