

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal
 Dept: City Manager
 Subject: RECOMMENDATION TO AWARD CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES FOR FIRE FLOW WATER IMPROVEMENTS PROJECT NO. FF04

From: Keith G. Jones
 Dept: Public Works
 Date: June 8, 2010

OBJECTIVE

To recommend that the City Council award a contract for professional engineering services of the Fire Flow Water Improvements Project No. FF04.

BACKGROUND

The Water Master Plan has identified this project as one of the highest priority fire flow deficiency projects. This project will relieve fire flow capacity deficiencies in the areas along Hazard Avenue and 11TH Street from Brookhurst Street to Kerry Street, Kerry Street from 11TH Street to Hazard Avenue, and other residential streets as shown in the attached location map. The project will be designed and constructed during FY 2010/11.

DISCUSSION

Pursuant to Garden Grove Municipal Code Section 2.50.110 and Government Code Section 4526, staff requested proposals from five (5) firms to provide professional engineering services. Out of those five (5), only four (4) consultants responded. Three staff members rated the submitted proposals on the basis of qualifications without considering cost. Based on evaluation results, Tetra Tech 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:

	Tetra Tech Irvine, CA	Bureau Veritas Costa Mesa, CA	Psomas Costa Mesa, CA	Hunsaker & Associates Irvine, CA
<i>Rater A</i>	169	168	166.5	159.5
<i>Rater B</i>	169.5	168	165.5	163
<i>Rater C</i>	166	166	165.5	157.5
Totals	504.5	502	497.5	480

RECOMMENDATION TO AWARD CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES FOR FIRE FLOW WATER IMPROVEMENTS PROJECT NO. FF04

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

FINANCIAL IMPACT

The cost of this project is \$167,314 and will be financed with Water Funds. There is no impact to the General Fund

RECOMMENDATION

It is recommended that the City Council:

- Award the contract for professional engineering services to Tetra Tech for the Fire Flow Water Improvements Project No. FF04.
- Authorize the City Manager to sign the professional service agreement with Tetra Tech for the professional engineering services of the Fire Flow Water Improvements Project No. FF04 in the amount of \$167,314.



KEITH G. JONES
Public Works Director



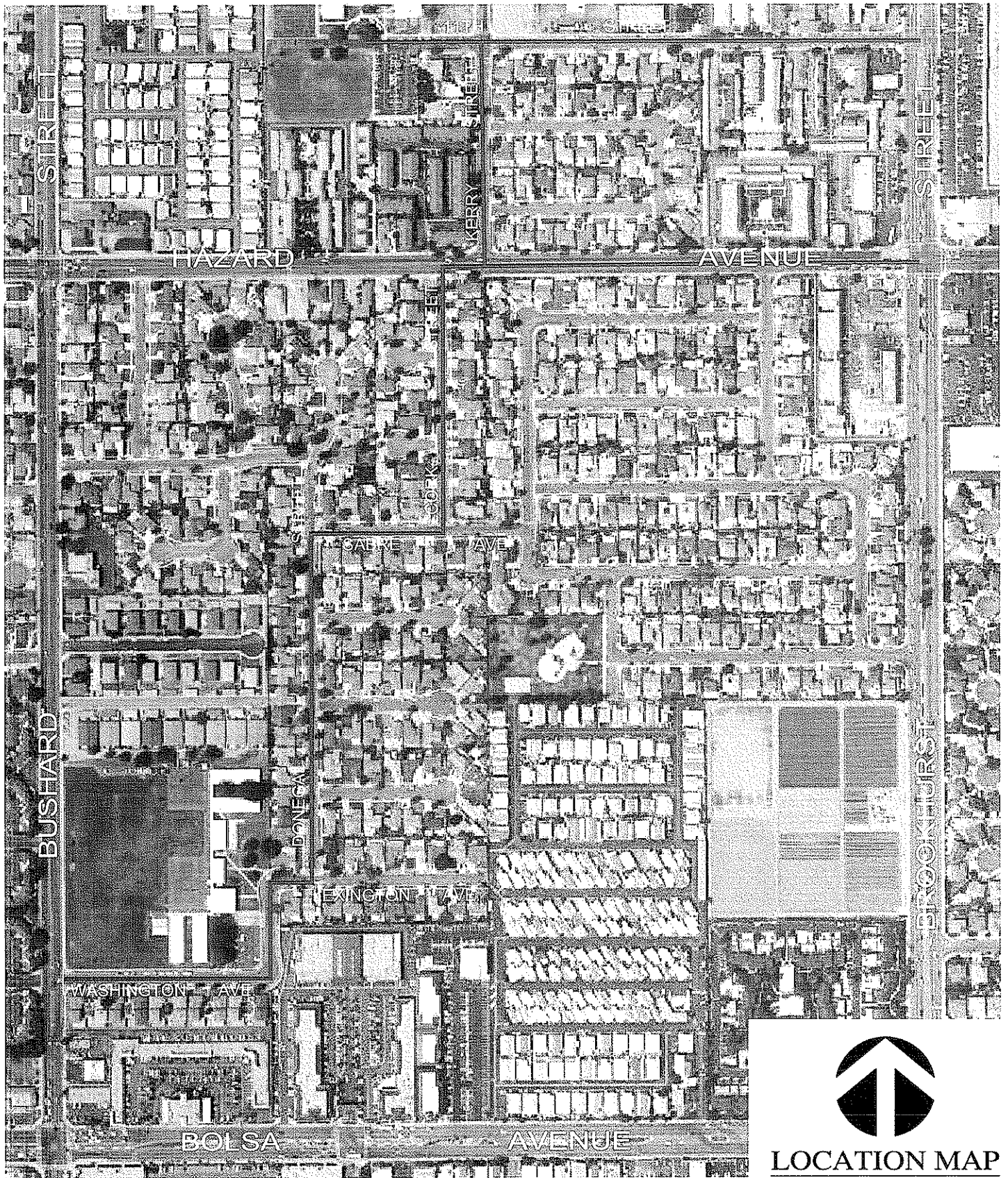
By: Samuel Kim
Project Engineer

Attachment: 1) Location Map
2) Professional Services Agreement

Recommended for Approval



Matthew Fertal
City Manager




LOCATION MAP

CHECKED BY: S.K.	PREPARED BY: M.C.	DRAWN BY: M.C.	SCALE: N.T.S.	PROJECT NO.	DATE: MAY 26, 2010
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City of Garden Grove
 Department of Public Works



LOCATION MAP
 WATER IMPROVEMENTS CIP
 PROJECT FF04

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made and entered into, to be effective the 8th day of June, 2010, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "City," and Tetra Tech, Inc., a Delaware 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 Utility Research, Design Survey, Potholing, Permitting and Engineering Services for the construction of Fire Flow Water Improvements Project No. FF04 (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 \$167,314.

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 and shall name the City of Garden Grove and its officers, councilmembers, 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 occurrence, 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.

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.

2. Automobile Liability:

\$1,000,000 per accident for bodily injury and property damage.

3. Employer Liability:

\$1,000,000 per accident for bodily injury or disease.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City and its councilmembers, officials, officers, employees, agents or 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 City 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 councilmembers, officers, officials, employees, agents and volunteers are to be covered as insureds with respect to: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned occupied or used by Consultant; or 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, or 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, the Garden Grove Agency for Community Development 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 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.

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 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 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 is 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: Mr. Samuel Kim, P.E.

To Consultant: Tetra Tech, Inc.
17885 Von Karman, Suite 500
Irvine, CA 92614-6213
Attention: Mr. Scott Szymborski, P.E.

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 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: _____
Matthew J. Fertal
City Manager

ATTEST:

By: _____
Kathleen Bailor
City Clerk

Tetra Tech, Inc.
By: _____
Richard A. Lemmon
Senior 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

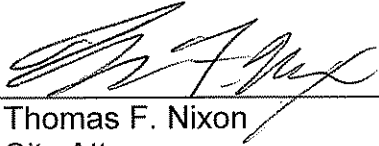
By:  _____
Thomas F. Nixon
City Attorney

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT "A"
Scope of Work (Rev 5-10-10)

The following is a of the Scope of Work

TASK 1 – PRELIMINARY DESIGN

Data Gathering and Research: Tetra Tech key members of the design team will meet with the City staff to discuss design parameters, site specific conditions, project goals and the latest developments. We will obtain information such as record drawings, substructure maps, reports, standard title blocks, studies, master plans, and standard plans and specifications necessary to support the preparation of the project documents. Tetra Tech will conduct a complete and thorough review of the gathered documents including reports, utility location maps, tract maps, parcel maps, existing easement(s), legal descriptions or other pertinent information necessary to complete the work including review of the City's most current sewer master plan.

Utility Research: A complete utility research within the project area will be conducted. As part of preparing construction plans, the utility companies will be notified and respond in writing that they have reviewed the preliminary and final construction plans for any conflicts. Potholing of existing utilities will be required. All phone and electric underground will be exposed top to bottom and measured during investigation.

Utility Coordination: Tetra Tech will conduct complete utility coordination as required to construct the replacement sewer line facilities, including coordinating relocation work if required.

USA Dig Alert Notification:

- Send letter request to USA Dig Alert for listing of member utility companies within project area. Tetra Tech will endeavor to research agencies that are not a member of USA Dig Alert but in no way will assume liability for finding all abandoned utilities, or utilities in working order not identified by USA Dig Alert or industry standard research methods.
- Send letter request to each dry utility agency and personally research the City's sewer record drawings.

Survey: Coast Surveying will perform the survey. An aerial topography will be completed. Performance of necessary research and surveying as required to perform design work including the establishment of all existing street alignments, centerline control, bench mark elevations, existing right-of-way limits, identifications of existing surface features and topography. Sewer and storm drain facilities will be "dipped" and rim elevations shot at each manhole within the project limits.

Coordination with Affected Agencies: Coordination, as required, with all affected utilities or agencies will be the responsibility of Tetra Tech. Tetra Tech will be responsible for obtaining all necessary permits, traffic control, and clearances for all necessary field work. Tetra Tech will determine the number of copies required for outside utilities and or agencies and will submit those on behalf of the City.

Potholing: Tetra Tech has included twenty (20) potholes to support the design effort. SAF-r-DIG will be responsible for the work. Tetra Tech will prepare a pothole schedule and plan after determining a preliminary horizontal alignment for the project.

Preliminary Design Report (25% Design): Preparation of 25% design work to facilitate the water improvement construction is required as indicated in the project understanding section and as further described below. Tetra Tech will provide a preliminary design report (25% design) that includes a preliminary plan view of the proposed water main alignment, permit requirements, preliminary schedule and costs, and recommendations of construction requirements and sequence.

TASK 2 – FINAL DESIGN

Prepare Construction Drawings: This task includes preparation of the detailed design plans for the construction. The following is an estimated list of the required drawings.

Title Sheet	1 sheet
General Notes Symbols Abbreviations	1 sheet
Piping Plan and Profile	10 sheets
Miscellaneous Pipeline Details	<u>6 sheets</u>
Total	18 sheets

Quantities will be shown on the plans. All sheets will be stamped with a seal and signed by a California registered civil engineer and survey work will be performed under the direct supervision of a California registered licensed surveyor. The construction plans will be plotted using AutoCAD Release 2008 and all will be in 1-inch equals 40-foot horizontal scale for plans.

Prepare Construction Specifications: Tetra Tech will prepare technical specifications to support the drawings and complete the elements of the project. We will utilize the City’s Standard Specifications and Standard drawings where necessary. We will follow the City’s Standard Specifications format used on their past projects. It is assumed that the City will provide an electronic format version of the latest edition of the front-end documents and general provisions to be incorporated with the technical specifications. We will develop the necessary special provisions required for the work and add them into the specifications. We will recommend the number of working days for construction. We propose to provide a table of contents for the 60% submittal and technical specifications starting with the 90% submittal.

Prepare Engineer’s Opinion of Probable Construction Cost: Tetra Tech will prepare a detailed engineer’s opinion of probable construction cost for the project. The final estimate will provide costs for items identified in the Bid Schedule of the specifications.

Prepare and Provide Design Notebook: Provide the City with two (2) copies of a design notebook. The notebook will include all pertinent correspondence, calculations, quantity and cost estimates. The final copies will be signed and stamped by the registered engineer in charge.

Deliverables: Final engineering design will be submitted at 60%, 90%, 99%, and 100% stages of design. Seven (7) sets of progress submittal prints (full size) and/or reports will be given to the City for each stage of design. Tetra Tech will make a determination of the number of copies required for outside utilities and/or agencies and will submit those on behalf of the City. Final submittal deliverables are defined below.

- Two (2) sets of plans (prints and mylars reverse read). Drawings will be on 24-inch by 36-inch at 40-scale plan view and 4-scale vertical. Details will 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. The project specifications and engineer's construction cost estimate will be signed and stamped by a registered civil engineer. Two (2) sets of project specifications will be submitted, one original set unbound and one set copied and bound.

- CD with AutoCAD "DWG" format of the project plans, Microsoft "Word" files of project specifications, and Microsoft Excel file of Engineer's cost estimate.
- Two (2) copies of the design notebook. The notebook will include pertinent correspondence, calculations, quantity and cost estimate. The final copy will be signed and stamped by the registered engineer in charge.

TASK 3 – ASSISTANCE WITH BID AND AWARD

Bid Assistance: Provide assistance during bidding if required to answer questions that arise from the contract documents. Tetra Tech will provide the City with a signed set of reproducible bidding documents for the project. We will assist the City in the bidding and award of the contract documents to include: developing a list of qualified Contractors, answering Contractors' questions, issuing addenda, reviewing the bids, and assisting the City in recommending award of the contract. Responses to questions will be in writing to the City. It is assumed that the City will distribute the RFI and addendum responses to the contractors accordingly.

TASK 4 – PREPARE TRAFFIC CONTROL PLANS (OPTIONAL)

Tetra Tech will retain PMK Associates, Inc. to prepare Traffic Control Plans. PMK will design the estimated four (4) traffic control plans covering the Hazard Avenue reach. Traffic control plans will be prepared in accordance with the latest California MUTCD, WATCH Manual and the City of Garden Grove requirements. PMK will perform the field work to verify the existing roadway, striping and signing conditions. We have assumed two (2) meetings will be required to discuss traffic control concept and City comments. PMK will address the City's comments on the traffic control plans. Temporary traffic signal plans are not included in the proposed scope and any request to prepare temporary traffic signal plans will be considered as an additional work.

ASSUMPTIONS

Project management, meetings and coordination is distributed amongst the other tasks.

As stated in the RFP, the City will provide the following:

- Environmental processing
- Boilerplate of the contract documents
- Sample of a recent water project (plans and specifications) showing acceptable drafting standards and language
- AutoCAD title sheet and design sheet border
- Assist with plan research of available City plans
- Advertising and review of the construction bids and construction award, including required printing
- Construction management and administration, inspection, and materials testing
- Reproduction for bidding and construction
- As-built drawings and other records available and pertinent to the project
- Permit/plan checking fee not waived nor made the responsibility of the Contractor

EXHIBIT B

SCHEDULE OF PAYMENT



**EXHIBIT "C"
2010**

**HOURLY CHARGE RATE AND
EXPENSE REIMBURSEMENT SCHEDULE**

Professional

Engineering Intern/Technician/Assistant.....	\$ 65.00
Project Administrator	\$ 107.00
Designer/CAD Operator/Engineer I.....	\$ 117.00
Engineer II and III/Senior Designer	\$ 127.00
Biologist.....	\$ 127.00
Planner	\$ 127.00
Senior Engineer/Landscape Architect.....	\$ 140.00
Project Engineer/Project Coordinator.....	\$ 135.00
Senior Planner	\$ 180.00
Senior Scientist.....	\$ 180.00
Senior Project Engineer.....	\$ 180.00
Project Manager/Sr. Project Coordinator....	\$ 200.00
Senior Project Manager.....	\$ 260.00
Program Director/Project Director.....	\$ 275.00

Administrative

Administrative Clerk	\$ 62.00
Word Processor/Admin. Support.....	\$ 87.00
Graphic Designer.....	\$ 117.00

Reimbursable In-House Costs

Photo Copies (B&W 8.5"x11").....	\$ 0.15/Each
Photo Copies (B&W 11"x17").....	\$ 0.40/Each
Color Copies (up to 8.5"x11")	\$ 2.00/Each
Color Copies (to 11"x17")	\$ 3.00/Each
Computer Usage.....	\$ 2.30/Hour

Survey/Mapping

Survey Technician I.....	\$ 109.00
Survey Technician II/Field Supervisor.....	\$ 125.00
Senior Surveyor.....	\$ 141.00
Project Surveyor.....	\$ 163.00
Two-Person Survey Party	\$ 230.00
Two-Person Survey Party with GPS.....	\$ 275.00
Three-Person Survey Party	\$ 320.00
Survey Travel Time (Two-person).....	\$ 109.00
Survey Travel Time (Three-person).....	\$ 153.00

Construction Management

Construction Observer I.....	\$ 96.00
Construction Observer II	\$ 112.00
Senior Construction Observer.....	\$ 135.00
Resident Engineer.....	\$ 165.00
Construction Manager	\$ 190.00

Compact Discs	\$10.00/Each
Large Format Copies	\$ 0.80/S.F.
Mileage	\$0.50/Mile *

*current GSA POV Mileage Rate subject to change

All other direct costs, such as reproduction, special photography, postage, delivery services, overnight mail, out-of-area telephone calls, printing and any other services performed by subcontractor, will be billed at cost plus 15%.

NOTE: Rates subject to change annually.