



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: June 21, 2022

Agenda Item 4L
Approvals:
City Manager ES *JS*
Dept. Head DR
Attorney CJ
Finance JW

Department: Utilities
Prepared By: David Rebensdorf, Utilities Director *DR*

Subject: *RATIFICATION OF EMERGENCY PURCHASES AND SUPPLEMENTAL FUNDING FOR CYPRUS SHORE PUMP STATION EMERGENCY OPERATION, PROJECT No. 12209 AND CYPRUS SHORE STORM DRAIN EMERGENCY RELOCATION, PROJECT No. 12004.*

Fiscal Impact: Yes. For the Cyprus Shore Pump Station Emergency Operation, Project No. 12209, \$795,400 has been budgeted for the initial 210 days of emergency bypass pump station operation. An additional 90 days of operation is recommended with funding from a supplemental appropriation in the amount of \$357,225 from the Sewer Fund Depreciation Reserve to Account No. 054-476-45300-000-12209.

For the Cyprus Shore Storm Drain Emergency Relocation, Project No. 12004, \$451,000 has been budgeted, and a supplemental appropriation of \$98,412 is recommended from the Storm Drain Fund Depreciation Reserve to Account No. 059-553-45300-000-12004 for relocation design.

There is sufficient fund balance within the proposed funds for the recommended supplemental appropriations.

Summary: Coastal bluff movement at Cyprus Shore necessitated an emergency response to ensure uninterrupted wastewater and storm drainage. On September 20, 2021, City staff installed a temporary emergency sewer bypass pump system adjacent to the Cyprus Shore Clubhouse near the intersection of Calle Ariana and Avenue de las Palmeras. In order to protect public health and safety, the City Council ratified the emergency Professional Services Agreement and construction contracts approved by the City Manager with AKM Consulting Engineers and O'Connell Engineering and Construction, Inc. (O'Connell) and an initial appropriation of funding for expenditures, including construction management/inspection services for Dudek Engineering, material purchases and rentals at its October 19, 2021 City Council Meeting. With the need for continued operation of the pump station with pump watch while a more permanent facility is designed and constructed, additional operational funding was approved on December 7, 2021, February 15, 2022, and April 5, 2022. To allow for procurement of materials and construction of a temporary pump station, an additional 90 days is needed for emergency wastewater pumping operation.

Background: Cyprus Shore Pump Station Emergency Operation, Project No. 12209

To continue sewer service to approximately 400 homes within the Cyprus community while construction is completed of a temporary pump station with electric power and monitoring capabilities, additional funding for pump watch and equipment and materials is needed. Staff is anticipating 90 additional days to allow the contractor to procure material and start construction. The contractor is working on a schedule to temporarily operate the pump station without requiring in person pump watch. Procurement of materials which impacts sequencing of construction is delaying the schedule to eliminate pump watch. Additional time and funding for in person pump watch is needed to ensure uninterrupted service and to prevent a sewer spill.

Staff is recommending the City Council ratify the City Manager’s approval of a contract change order for as needed pump watch based on the estimated costs for rental and purchase of materials, such as, electrical equipment, piping, pumps, emergency generator and fuel to operate the temporary pump station as shown below.

Emergency Wastewater Operation Cost Estimate

Pump, Piping and Fittings	\$ 8,200/month
K-Rail	1,075/month
Generator	11,000/month
Diesel Fuel	3,800/month
Pump Watch (O’Connell)	85,000/month
<u>Contingency 10%</u>	<u>10,000/month</u>
Subtotal	119,075/month
Total (Assumes three months of operation)	\$357,225

Cyprus Shore Storm Drain Emergency Relocation, Project No. 12004:

Due to the recent landslide at Cyprus Shore development near the Club House, the City’s storm drain system was compromised and needs to be replaced and relocated with a new permanent below grade storm drain system. The new storm drain will include approximately three catch basins on Avenida de Las Palmera just east and west of Calle Ariana, and one catch basin on Calle Ariana east of Avenida de Las Palmera, as shown on Attachment 2. The captured storm runoff in these catch basins will be conveyed, via a 36-inch HDPE pipe and possibly one smaller diameter pipe depending upon the hydraulic analysis, through the HOA’s private park joining the existing storm on the westerly side of the park.

Since AKM Consulting Engineers (AKM) designed the temporary relocation design and study for this project and are very familiar with this area, staff requested a proposal for design and preparation of a bid package, including construction support services. AKM provided a proposal in the amount of \$98,412 for this work. Staff reviewed their proposal and the City Manager approved a Professional Services Agreement. Due to the emergency caused by the landslide and the need to improve drainage in a timely manner, staff recommends ratifying the Professional Consultant Services Agreement with AKM (Attachment 8). The City Manager has the authority to approve emergency

contracts and purchases when there is a need to protect public health and safety per Section 3.40.070 of the City of San Clemente Municipal Code.

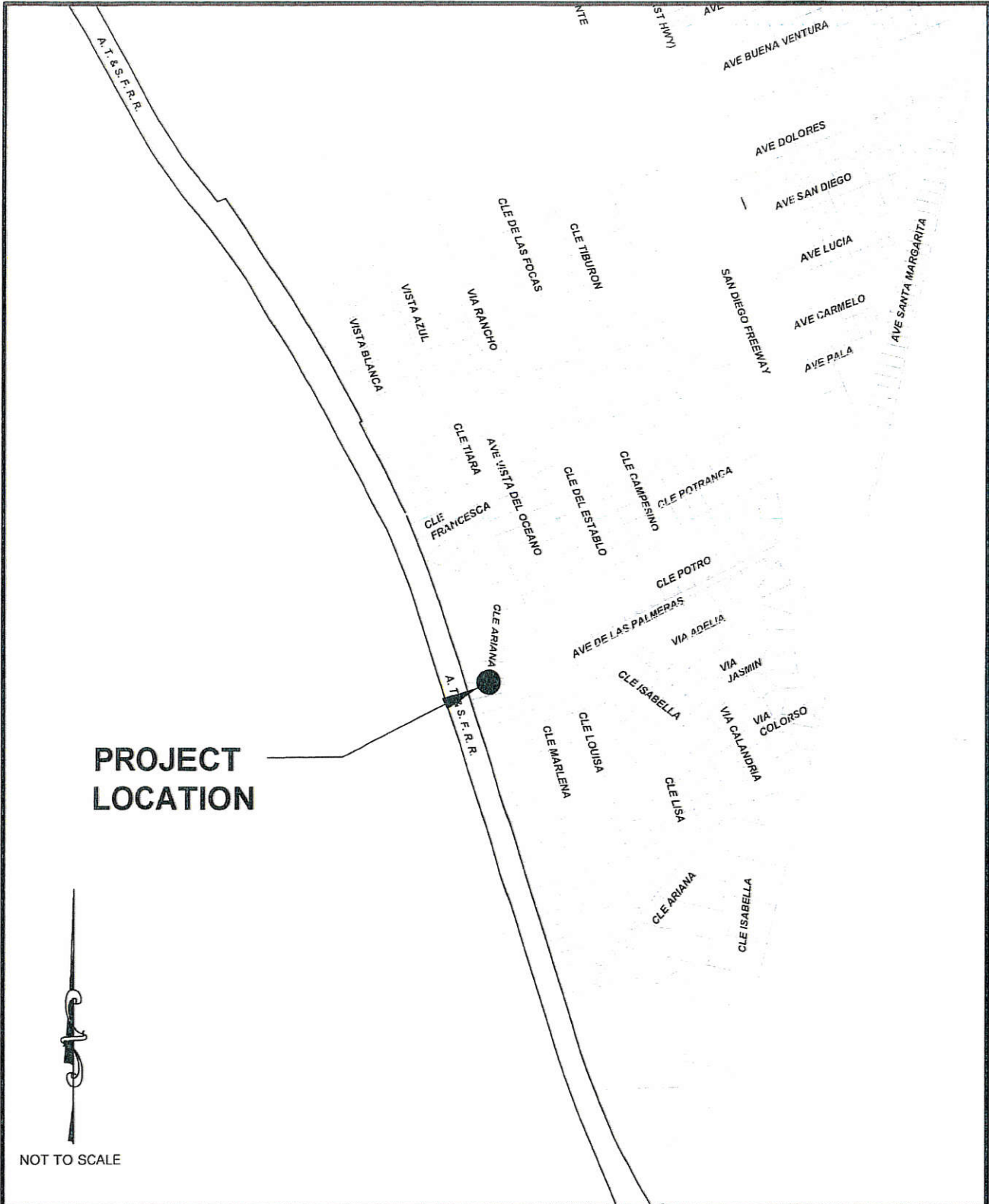
Recommended

Action: STAFF RECOMMENDS THAT the City Council:

1. Make a finding that an emergency continues to exist due to the potential failure of an existing sewer pump station and storm drain system and that the situation requires immediate action to prevent or mitigate impairment to property and public services, that might otherwise occur if required to incur delays attributed to the typical engineering design and public competitive bidding process;
2. Approve a supplemental appropriation in the amount of \$357,225 to Account Number 054-476-45300-000-12209 from the Sewer Fund Depreciation Reserve;
3. Ratify a Change Order with O'Connell Engineering and Construction, Inc. on a time and materials basis for \$255,000 for Cyprus Shore Emergency Pump Station Bypass Operation, Project No. 12209;
4. Approve a supplemental appropriation in the amount of \$98,412 from the Storm Drain Fund Depreciation Reserve to account 059-553-45300-000-12004; and
5. Ratify a Professional Services Agreement with AKM Consulting Engineers for design services for Cyprus Shore Storm Drain Emergency Relocation, Project No. 12004 for an amount not to exceed \$98,412.

- Attachments:**
1. Location Map
 2. Proposed design for new Storm Drain, Project No.12004.
 3. October 19, 2021 City Council Agenda Report without attachments.
 4. December 7, 2021 City Council Agenda Report without attachments.
 5. February 15, 2022 City Council Agenda Report without attachments.
 6. April 5, 2022 City Council Agenda Report without attachments.
 7. O'Connell Engineering and Construction Contract Change Order No. 04.
 8. AKM Consulting Engineers Professional Services Agreement.

Notification: None.



**PROJECT
LOCATION**



NOT TO SCALE

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City of San Clemente
 910 Calle Negocio, Suite 100
 San Clemente, CA 92673
 Tel (949) 361-6100
 Fax (949) 361-8316

LOCATION MAP

**Cyprus Shore Storm Drain and
 Pump Station Relocation**
 PN 12004 & 12209

Attachment 2



	CITY OF SAN CLEMENTE
	Cyprus Shore Storm Drain
March 8, 2022	



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: October 19, 2021

Department: Utilities
Prepared By: David Rebensdorf, Utilities Director DR

Subject: *RATIFICATION OF EMERGENCY PURCHASES, PROFESSIONAL SERVICES AGREEMENT WITH AKM CONSULTING ENGINEERS AND CONSTRUCTION CONTRACTS WITH O'CONNELL ENGINEERING FOR CYPRUS SHORE STORM DRAIN EMERGENCY RELOCATION AND CYPRUS SHORE PUMP STATION EMERGENCY RELOCATION, PROJECT No.'s 12004 AND 12209.*

Fiscal Impact: Yes. An estimated \$205,400 is recommended for continuous emergency operation of the pump station and bypass for two months. An appropriation of \$205,400 is recommended from the Sewer Fund Depreciation Reserve to Account No. 054-476-45300-000-12209.

The initial estimated cost for design, permitting and power for a temporary pump station relocation with remote monitoring and improved operating capabilities is \$88,580. An appropriation of \$88,580 is recommended from the Sewer Connection Fee Reserve to Account No. 054-477-45300.

The estimated cost for the temporary relocation of the storm drain is \$256,000. An appropriation of \$256,000 is recommended from the Storm Drain Fund Depreciation Reserve to Account No. 059-553-45300-000-12004.

There is sufficient fund balance within all proposed funds for the recommended appropriations.

Summary: Coastal bluff movement at Cyprus Shore necessitated an emergency response to ensure uninterrupted wastewater and storm drainage in September 2021. In order to protect public health and safety, staff recommends the City Council ratify the emergency Professional Services Agreement and construction contracts approved by the City Manager with AKM Consulting Engineers and O'Connell Engineering and Construction, Inc. (O'Connell) and appropriate funding for the expenditures including construction management/inspection services for Dudek Engineering, material purchases and rentals.

Background: When the Cyprus community was developed, the collection system, a sewer pump station serving approximately 400 homes and a portion of the storm drain system was dedicated to and accepted by the City. Due to coastal bluff movement adjacent to the Cyprus Shore Clubhouse near the intersection of Calle Ariana and Avenue de las Palmeras and to protect public safety and property a temporary emergency sewer bypass was installed by City staff on September 20, 2021. In addition, a bypass of the storm drain in Avenue de las Palmeras and the private beach access road may be

necessary to accommodate urban runoff and storm flows until the bluff is stabilized and rebuilt. Design analysis to address urban runoff and storm flows is ongoing, and alternative methods may be implemented.

The temporary emergency sewer pump station bypass is utilizing two existing manholes and pumps with generator power to convey wastewater in above ground piping to the sewer forcemain. This type of operation should be considered temporary due to lack of storage within the system and is recommended for continuous monitoring to prevent a sewer spill in the event a pump or generator fails to operate. Due to limited City staffing and to ensure preventative maintenance activities are being completed by City staff for other facilities, O'Connell was hired to perform pump watch for a cost of \$83,988 for 30 days. Staff contacted four companies and O'Connell provided the lowest informal bid, Xylem provided a bid in the amount of \$123,000 per month. Newest and J.R. Filanc did not provide a bid due to lack of available staffing.

Due to the emergency nature of wastewater pump station operation, AKM Consulting Engineers was hired to design a temporary pump station to ensure uninterrupted operation by adding power, telemetry and wastewater storage instead of relying on storage within existing manholes and pipelines that can clog from debris and grease. The additional capacity created from storage can be utilized in conjunction with the existing pump station which will increase available response time in the future when operation failures of Cyprus Shore Pump Station occur. Due to the need for increased capacity, the Sewer Connection Fee Reserve is being recommended to fund the temporary pump station. Additional funding, material purchases and construction costs are anticipated and will be considered as more information becomes available.

To assist with the design and construction for temporary relocations of the wastewater pump station and storm drain, AKM Consulting Engineers was hired for an amount not to exceed \$98,464. O'Connell was hired for 30 days of pump watch in the amount of \$83,988, with an option to extend the contract for an additional 30 days and \$40,000 for installation of the Storm Drain Emergency Bypass. In addition, 500 linear feet of High Density Polyethylene pipe and fittings was ordered from P&F Distributors in the amount of \$122,392. Dudek Engineering was contacted and will provide construction management and inspection services, through an existing on-call agreement, for the duration of the emergency construction relocations. The City Manager has the authority to approve emergency contracts and purchases when there is a need to protect public health and safety per Section 3.40.070 of the City of San Clemente Municipal Code.

The estimated cost for temporary wastewater service operations, temporary sewer pump station design and temporary relocation of the storm drain are shown on the following page.

Sewer Costs

Emergency Pump Station Operation Estimated Costs

Pump, Piping and Fittings	\$ 8,000/month
K-Rail	700/month
Generator	10,000/month
Pump Watch (O'Connell)	84,000/month
Subtotal	102,700/month
Total (Assumes two months of operation)	\$205,400

Temporary Pump Station Relocation Estimated Costs

Engineering	\$ 48,580
Administration/Permitting	15,000
Power (Transformer and Meter)	25,000
Inspection/Construction Management	TBD
Manhole/Wetwell	TBD
Construction	TBD
Total Cost	\$ 88,580

Storm Drain Costs

Temporary Relocation Costs

Engineering	\$ 49,884
Administration/Permitting	15,000
Inspection/Construction Management	10,000
500' of 36-inch HDPE Pipe and Fittings	125,000
Construction	40,000
Contingency	10,116
Sandbags	3,800
K-Rail (550/month X 4 months)	2,200
Total Cost	\$256,000

Recommended

Action: STAFF RECOMMENDS THAT the City Council:

1. Make a finding that an emergency exists due to the potential failure of an existing sewer pump station and storm drain system and that the situation requires immediate action to prevent or mitigate impairment to property and public services, that might otherwise occur if required to incur delays attributed to the typical engineering design and public competitive bidding process;
2. Declare that the public interest and necessity demand the immediate expenditure of public funds to safeguard public health;
3. Approve an appropriation in the amount of \$205,400 to Account Number 054-476-45300-000-12209 from the Sewer Fund Depreciation Reserve;

4. Approve an appropriation in the amount of \$88,580 to Account Number 054-477-45300 from the Sewer Connection Fee Reserve;
5. Approve an appropriation in the amount of \$256,000 to Account Number 059-553-45300-000-12004 from the Storm Drain Fund Depreciation Reserve;
6. Ratify a Construction Contract with O'Connell Engineering and Construction, Inc. on a time and materials basis for up to \$83,988 and authorize the City Manager to extend the Contract for an additional 30 days, if needed, for Cyprus Shore Emergency Pump Station Bypass Operation, Project No 12209;
7. Ratify a Construction Contract with O'Connell Engineering and Construction, Inc. on a time and materials basis for up to \$40,000 for Cyprus Shore Storm Drain Emergency Relocation, Project No 12004;
8. Ratify a purchase with P&F Distributors for storm drain pipe and fitting in the amount of \$122,391.75 for Cyprus Shore Storm Drain Emergency Relocation, Project No 12004: and,
9. Ratify an Emergency Professional Services Agreement with AKM Consulting Engineers on a time and materials basis for up to \$98,464 for Cyprus Shore Storm Drain Emergency Relocation and Cyprus Shore Emergency Pump Station, Project No.'s 12004 and 12209.

- Attachments:**
1. Location Map.
 2. Construction Contract with O'Connell for Cyprus Shore Emergency Pump Station Bypass Operation.
 3. Construction Contract with O'Connell for Cyprus Shore Storm Drain Emergency Relocation.
 4. P&F Distributors Quote.
 5. Professional Services Agreement with AKM Consulting Engineers for Cyprus Shore Storm Drain Emergency Relocation and Cyprus Shore Emergency Pump Station.

Notification: None.

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AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: December 7, 2021

Agenda Item: 6J
Approvals:
City Manager EP GF
Dept Head DR
Attorney GF
Finance GF

Department: Utilities
Prepared By: David Rebensdorf, Utilities Director DR

Subject: *RATIFICATION OF EMERGENCY PURCHASES AND SUPPLEMENTAL FUNDING FOR CYPRUS SHORE PUMP STATION EMERGENCY OPERATION AND CYPRUS SHORE STORM DRAIN EMERGENCY RELOCATION, PROJECT No.'s 12209 AND 12004.*

Fiscal Impact: Yes. \$205,400 was approved for an initial 60 days of emergency bypass pump station operation. An additional 60 days of operation is recommended with funding from a supplemental appropriation in the amount of \$236,000 from the Sewer Fund Depreciation Reserve to Account No. 054-476-45300-000-12209.

The initial estimated cost for the temporary relocation of the storm drain was \$256,000. Based on design and procurement of materials, the updated cost estimate is \$411,000. Staff is recommending a supplemental appropriation in the amount of \$155,000 from the Storm Drain Fund Depreciation Reserve to Account No. 059-553-45300-000-12004.

There is sufficient fund balance within all proposed funds for the recommended appropriations.

Summary: Coastal bluff movement at Cyprus Shore necessitated an emergency response to ensure uninterrupted wastewater and storm drainage. On September 20, 2021, City staff installed a temporary emergency sewer bypass pump system adjacent to the Cyprus Shore Clubhouse near the intersection of Calle Ariana and Avenue de las Palmeras. In order to protect public health and safety, the City Council ratified the emergency Professional Services Agreement and construction contracts approved by the City Manager with AKM Consulting Engineers and O'Connell Engineering and Construction, Inc. (O'Connell) and an initial appropriation of funding for expenditures, including construction management/inspection services for Dudek Engineering, material purchases and rentals at its October 19, 2021 City Council Meeting. With the need for continued operation of the pump station with pump watch while a more permanent facility is constructed and based on detailed design of the storm drain relocation, additional funding is being recommended. In addition, due to lack of availability of materials and changes in suppliers, ratification of purchases is required.

Background: To continue sewer service to approximately 400 homes within the Cyprus community while design and construction of a temporary pump station with electric power and monitoring capabilities, additional costs for pump watch are needed. Staff is anticipating approximately 60 additional days may be needed for pump watch to ensure uninterrupted service and to prevent a sewer spill. O'Connell was hired through

an emergency contract to provide 30 days of pump watch for \$83,988 which was extended for 30 days as previously authorized by the City Council. Several temporary and permanent pump station options were evaluated which requires additional time to for design. Staff is recommending the City Council authorize the City Manager to approve a contract change order for as needed pump watch for an additional 60 days with O'Connell. In addition, funding is needed for expenditures related to rentals and purchase of materials, such as, electrical equipment, piping, pumps, emergency generator and fuel to operate the temporary pump station. The temporary relocation of the pump station is under design and electrical power is being installed by SDG&E. Staff anticipates completion of pump watch in February 2022. Once design is finalized, staff will recommend additional funding and contracts for the temporary relocation of the pump station.

The storm drain above ground bypass is under construction and consists of approximately 500 linear feet of above ground 36-inch High Density Polyethylene (HDPE) Pipe and 100 linear feet of 18-inch HDPE Pipe routed south of the association Clubhouse and through the private community park. K-rail, sandbags and visqueen will be utilized to route nuisance and storm flows around the clubhouse and into the 18-inch storm drain (see Exhibit 2). Due to an issue with availability of pipe, the ratified purchase from P&F Distributors by the City Council on October 19, 2021 was not completed. Fortunately, storm drain pipe and fittings were available through Envirocon Systems in the amount of approximately \$120,000. In addition, staff is requesting the City Council ratify a construction contract with Sancon Technologies, Inc. in the amount of \$57,280 to install approximately 225 linear feet of liner from the above ground junction structure near the clubhouse to the intersection of Avenue de las Palmeras and Calle Marlana due to increased pressure in the storm drain caused by the above ground piping. Construction for the relocation of the storm drain is anticipated to be complete by the end of December 2021.

The City Manager has the authority to approve emergency contracts and purchases when there is a need to protect public health and safety per Section 3.40.070 of the City of San Clemente Municipal Code. The estimated cost for temporary wastewater service operations and temporary relocation of the storm drain are shown below.

Emergency Wastewater Operation Cost Estimate

Pump, Piping and Fittings	\$ 8,500/month
K-Rail	700/month
Generator	11,000/month
Diesel Fuel	3,800/month
Pump Watch (O'Connell)	84,000/month
<u>Contingency 10%</u>	<u>10,000/month</u>
Subtotal	118,000/month
Total (Assumes two months of operation)	\$236,000

Storm Drain Temporary Relocation Costs

Approved Initial Estimate

Engineering	\$ 49,884
Administration/Permitting	15,000
Inspection/Construction Management	10,000
500' of 36-inch HDPE Pipe and Fittings	125,000
Construction	40,000
Contingency	10,116
Sandbags	3,800
K-Rail (550/month X 4 months)	2,200
Total Cost	\$256,000

Current Cost Estimate

Engineering	\$ 49,884
Administration/Permitting	15,000
Inspection/Construction Management	22,500
500' of 36-inch and 100' of HDPE Pipe and Fittings	120,000
Thrust Restraint Pipe Clamps	20,000
Construction	40,000
36-inch Storm Drain Liner	60,000
Contingency 12%	40,616
36-inch Storm Drain Plug Rental and Maintenance	35,000
Sandbags	3,800
K-Rail (700/month X 6 months)	4,200
Total Cost	\$411,000

Recommended

Action: STAFF RECOMMENDS THAT the City Council:

1. Make a finding that an emergency exists due to the potential failure of an existing sewer pump station and storm drain system and that the situation requires immediate action to prevent or mitigate impairment to property and public services, that might otherwise occur if required to incur delays attributed to the typical engineering design and public competitive bidding process;
2. Declare that the public interest and necessity demand the immediate expenditure of public funds to safeguard public health;
3. Approve a supplemental appropriation in the amount of \$236,000 to Account Number 054-476-45300-000-12209 from the Sewer Fund Depreciation Reserve;
4. Approve a supplemental appropriation in the amount of \$155,000 to Account Number 059-553-45300-000-12004 from the Storm Drain Fund Depreciation Reserve;

5. Authorize the City Manager to approve a change order with O'Connell Engineering and Construction, Inc. on a time and materials basis for up to \$168,000 for Cyprus Shore Emergency Pump Station Bypass Operation, Project No 12209;
6. Ratify a purchase with Envirocon Systems for storm drain pipe and fittings in the amount of \$120,000 for Cyprus Shore Storm Drain Emergency Relocation, Project No 12004; and,
7. Ratify a Construction Contract with Sancon Technologies, Inc. in the amount of \$57,280 Cyprus Shore Storm Drain Emergency Relocation, Project No 12004.

- Attachments:**
1. Location Map.
 2. Storm Drain Location Exhibit.
 3. Envirocon Systems Initial Purchase Order.
 4. Sancon Technologies, Inc. Construction Proposal for a 36-inch Storm Drain Liner. The Construction Contract is on-file with the City Clerk's Office.
 5. October 19, 2021 City Council Agenda Report without attachments.

Notification: None.



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: February 15, 2022

Attachment 5

Agenda Item 65

Approvals:

City Manager 98 18

Dept. Head DR

Attorney CT

Finance JAL

Department: Utilities

Prepared By: David Rebensdorf, Utilities Director DR

Subject: *RATIFICATION OF EMERGENCY PURCHASES AND SUPPLEMENTAL FUNDING FOR CYPRUS SHORE PUMP STATION EMERGENCY OPERATION, PROJECT NO. 12209.*

Fiscal Impact: Yes. \$441,400 was approved for an initial 120 days of emergency bypass pump station operation. An additional 90 days of operation is recommended with funding from a supplemental appropriation in the amount of \$354,000 from the Sewer Fund Depreciation Reserve to Account No. 054-476-45300-000-12209. There is sufficient fund balance within the proposed fund for the recommended supplemental appropriation.

Summary: Coastal bluff movement at Cyprus Shore necessitated an emergency response to ensure uninterrupted wastewater and storm drainage. On September 20, 2021, City staff installed a temporary emergency sewer bypass pump system adjacent to the Cyprus Shore Clubhouse near the intersection of Calle Ariana and Avenue de las Palmeras. In order to protect public health and safety, the City Council ratified the emergency Professional Services Agreement and construction contracts approved by the City Manager with AKM Consulting Engineers and O'Connell Engineering and Construction, Inc. (O'Connell) and an initial appropriation of funding for expenditures, including construction management/inspection services for Dudek Engineering, material purchases and rentals at its October 19, 2021 City Council Meeting. With the need for continued operation of the pump station with pump watch while a more permanent facility is designed and constructed, additional operational funding was approved on December 7, 2021. To allow for procurement of materials and construction of a temporary pump station, an additional 90 days may be needed for emergency wastewater pumping operation.

Background: To continue sewer service to approximately 400 homes within the Cyprus community while construction of a temporary pump station with electric power and monitoring capabilities, additional funding for pump watch and equipment and materials is needed. Design has been completed for the temporary pump station and informal bids are anticipated by the middle of February. Staff is anticipating approximately 90 additional days may be needed for pump watch to ensure uninterrupted service and to prevent a sewer spill. If possible, the time the services are needed will be reduced based on availability of equipment and power.

Staff is recommending the City Council authorize the City Manager to approve a contract change order for as needed pump watch based on the estimated costs for

rental and purchase of materials, such as, electrical equipment, piping, pumps, emergency generator and fuel to operate the temporary pump station as shown below.

Emergency Wastewater Operation Cost Estimate

Pump, Piping and Fittings.	\$ 8,500/month
K-Rail	700/month
Generator	11,000/month
Diesel Fuel	3,800/month
Pump Watch (O'Connell)	84,000/month
Contingency 10%	<u>10,000/month</u>
Subtotal	118,000/month
Total (Assumes three months of operation)	\$354,000

Recommended

Action: STAFF RECOMMENDS THAT the City Council:

1. Approve a supplemental appropriation in the amount of \$354,000 to Account Number 054-476-45300-000-12209 from the Sewer Fund Depreciation Reserve; and,
2. Authorize the City Manager to approve a change order with O'Connell Engineering and Construction, Inc. on a time and materials basis for up to \$354,000 for Cyprus Shore Emergency Pump Station Bypass Operation, Project No 12209.

- Attachments:**
1. Location Map.
 2. October 19, 2021 City Council Agenda Report without attachments.
 3. December 7, 2021 City Council Agenda Report without attachments.

Notification: None.

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AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: April 5, 2022

Attachment 6

Agenda Item 6J

Approvals:

City Manager ES 18

Dept. Head DR

Attorney CJ

Finance FW

Department: Utilities
Prepared By: David Rebensdorf, Utilities Director DR

Subject: *RATIFICATION OF EMERGENCY PURCHASES, CONSTRUCTION CONTRACT WITH O'CONNELL ENGINEERING & CONSTRUCTION FOR CYPRUS SHORE PUMP STATION RELOCATION, AND FIRST AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT WITH AKM CONSULTING ENGINEERS, PROJECT No.'s 12004 AND 12210.*

Fiscal Impact: Yes. The total estimated project cost for the Cyprus Shore Pump Station Relocation, Project No. 12210 is \$2,623,150. The project was originally budgeted for \$88,580, and a supplemental appropriation of \$2,534,570 is recommended from the Sewer Connection Fee Reserve to Account No. 054-477-45300-000-12210.

A total of \$411,000 has been budgeted for Cyprus Shore Storm Drain Emergency Relocation, Project No. 12004. Based on actual costs and addition funding for project management, a supplemental appropriation is recommended in the amount of \$40,000 from the Storm Drain Fund Depreciation Reserve to Account No. 059-553-45300-000-12004.

There is sufficient fund balance within all proposed funds for the recommended supplemental appropriations.

Summary: Staff recommends additional funding for Project No.'s 12004 and 12210, ratifying a Construction Contract with O'Connell Engineering and Construction, Inc. (O'Connell) in the amount of \$1,974,950 for the Cyprus Shore Pump Station Relocation, ratifying a change order with O'Connell for the Storm Drain Relocation, and approval of a First Amendment to a Professional Services Agreement with AKM Consulting Engineers (AKM).

Background: Coastal bluff movement at Cyprus Shore necessitated an emergency response to ensure uninterrupted wastewater and storm drainage. On September 20, 2021, City staff installed a temporary emergency sewer bypass pump system adjacent to the Cyprus Shore Clubhouse near the intersection of Calle Ariana and Avenue de las Palmeras. In order to protect public health and safety, the City Council ratified the emergency Professional Services Agreement and Construction Contract approved by the City Manager with AKM and O'Connell and an initial appropriation of funding for expenditures, including construction management/inspection services for Dudek Engineering, material purchases and rentals at its October 19, 2021 City Council Meeting. With the need for continued operation of the pump station with pump watch while a more permanent facility is designed and constructed, additional operational

funding was approved on December 7, 2021 and February 15, 2022. Design was completed for the Pump Station Relocation by AKM and bids were received.

Discussion: Project No. 12210 - Cyprus Shore Pump Station Relocation, AKM prepared a design for the relocation of the pump station, which includes the following: wet well, three pumps, replacement of the six-inch forcemain in Calle Ariana, electrical equipment and instrumentation with emergency generator backup power to be purchased separately. The project will improve the pumps, electrical and motor control systems. Based on a bid package prepared by AKM, City staff contacted three contractors that have satisfactorily completed previous City projects to receive bids for the emergency Cyprus Shore Pump Station Relocation. The following bids were received on March 8, 2022:

O'Connell Engineering and Construction, Inc.	\$1,974,950
Jennette Company	\$2,467,935
SCW Contracting Corporation	\$4,096,168

Based on the low bid, construction costs are estimated as follows:

Design/Construction Services	\$ 77,200
Installation and Monitoring an Inclinometer	25,000
Construction Management, Inspection and Testing	175,000
Construction	1,974,950
Emergency Generator	75,000
Contingency (15%)	296,000
Total Project Cost	\$2,623,150

Based on the low bid, the City Manager approved a construction Contract with O'Connell in the amount of \$1,974,950. The City Manager has the authority to approve emergency contracts and purchases when there is a need to protect public health and safety per Section 3.40.070 of the City of San Clemente Municipal Code.

In addition, a First Amendment to the Professional Service Agreement with AKM is recommended to provide construction related engineering support services and to finalize design for the permanent relocation of the pump station in the amount of \$77,158 (Attachment 7). The original Professional Services Agreement with AKM was for preliminary design and analysis for the pump station and storm drain in the amount of \$98,464 and did not include final design or construction period services.

The pump station relocation project was budgeted for preliminary design and analysis in the amount of \$88,580. Based on the bids and additional services needed to complete the project, the total project cost is estimated at \$2,623,150, based on the project costs, a supplemental appropriation of \$2,534,570 is needed to fund the project.

Project No. 12004 – Cyprus Shore Storm Drain Emergency Relocation, the Emergency Storm Drain Relocation is partially constructed due to negotiations between the City and Cyprus Shore HOA related to its placement. The pipeline and fittings have been purchased, the pipeline has been partially placed and stored above

ground have been constructed. Based on a time and materials basis, approximately \$130,000 has been spent with O'Connell for equipment, staffing and materials. The original contract was approved for \$39,405 with a change order in the amount of \$31,230 approved within the project contingency limit. Based on actual construction costs to date, the City Manager approved a change order in the amount of \$59,000. As previously mentioned, the City Manager has the authority to approve emergency contracts and purchases when there is a need to protect public health and safety per Section 3.40.070 of the City of San Clemente Municipal Code.

Based on current construction costs, design, construction management, purchase of materials, storm drain lining, and plug installation and maintenance, approximately \$441,000 has been spent to date. Staff is requesting an additional \$10,000 for project management and contingency until the location of the pipeline is determined. At that time, additional funding will be needed to complete the relocation project. A total of \$411,000 has been budgeted, based on the cost as previously mentioned, a supplemental appropriation is recommended in the amount of \$40,000.

**Recommended
Action:**

STAFF RECOMMENDS THAT the City Council:

1. Make a finding that an emergency continues to exist due to the potential failure of an existing sewer pump station and storm drain system and that the situation requires immediate action to prevent or mitigate impairment to property and public services, that might otherwise occur if required to incur delays attributed to the typical engineering design and public competitive bidding process;
2. Declare that the public interest and necessity demand the immediate expenditure of public funds to safeguard public health;
3. Approve a supplemental appropriation in the amount of \$2,534,570 to Account Number 054-477-45300-000-12210 from the Sewer Connection Fee Reserve for Cyprus Shore Pump Station Relocation, Project No.12210;
4. Approve a supplemental appropriation in the amount of \$40,000 to Account Number 059-553-45300-000-12004 from the Storm Drain Fund Depreciation Reserve for Cyprus Shore Storm Drain Emergency Relocation, Project No. 12004;
5. Ratify a Construction Contract with O'Connell Engineering and Construction, Inc. in the amount of \$1,974,950 for Cyprus Shore Pump Station Relocation, Project No.12210;
6. Ratify a Change Order with O'Connell Engineering and Construction, Inc. on a time and materials basis for \$59,000 for Cyprus Shore Storm Drain Emergency Relocation, Project No. 12004; and,
7. Approve and authorize the City Manager to execute, Amendment No. 01 to Contract C21-43 by and between the City of San Clemente and AKM Consulting Engineers. This Amendment increases the contract amount from \$98,464 to \$175,622 (an increase of \$77,158).

4-5-22 / 6J-3

6-21-22 / 4L-18

- Attachments:**
1. Location Map.
 2. Construction Contract with O'Connell Engineering & Construction for Cyprus Shore Pump Station Relocation, Project No.12210 (without attachments).
 3. First Amendment to Professional Services Agreement with AKM Consulting Engineers.

Notification: None.

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4-5-22 / 6J-4

6-21-22 / 4L-19

CITY OF SAN CLEMENTE
CONTRACT CHANGE ORDER

PROJECT: Cyprus Shore Emergency Bypass Monitoring Contract
PROJECT NO.: 12209

Change Order No.: 04

OWNER: City of San Clemente
PROJ. MGR.: David Rebensdorf, Utilities Director

CONTRACTOR: O'Connell Engineering and Construction Inc
36572 Deauville Road
Winchester, CA. 92596

Date: 6/3/2022
Page 1 of 1

Original Contract Amount:	\$83,988.00
Previous CCO(s) Amount:	\$504,000.00
This CCO Amount:	<u>\$255,000.00</u>
Revised Contract Amount:	\$842,988.00
Notice to Proceed Date:	10/20/21
Original Contract Completion Date (30 Days):	11/03/21
Extended Calendar Days Through Previous CCO's:	180
Extended Calendar Days By This CCO:	90
Total Extension Calendar Days:	270
Extended Date for Completion:	N/A
Substantial Completion Date:	08/03/22

We hereby agree to extend the original contract by 90 days per this Change Order. This Order shall not be considered as such, until it has been signed by the Contractor and approvals are provided by the City.

The amount indicated shall be compensation on a time and materials basis for the work described, including all time extensions, direct and indirect costs, incidental or consequential costs or expenses, that have been or will be incurred by the Contractor.

O'Connell Engineering and Construction Inc
(Approval)

By: [Signature] Title: President Date: 6-3-22

CITY OF SAN CLEMENTE
(Approvals)

By: [Signature] Title: Utilities Director/Construction Mgr Date: 6/13/22

By: _____ Title: City Manager Date: _____

**CITY OF SAN CLEMENTE
CONTRACT CHANGE ORDER**

Exhibit "A"

**Cyprus Shore Emergency Bypass Monitoring Contract
Project No.: 12209**

**CCO#: 04
Date: 06/03/22
Page: 2 of 2**

Item No.	Description	Qty.	Unit	Contract Unit Price	Extended Total	Force Acct. or Negotiated Price	Time Extension (Calendar Days)		Total Time Extension (CD)
							weather	Other	
A	Cyprus Shore Emergency Bypass Monitoring Contract <i>Account # 054-476-45300-000-12209</i> <i>Continued monitoring services through 8/3/22</i>	1	LS	n/a	n/a	\$255,000.00	0	90	270
B									
C									
				SUBTOTALS:	\$0.00	\$255,000.00			
Total Price for this Contract Change Order = \$255,000.00							Total Time Ext. : 270		

CITY OF SAN CLEMENTE

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 2021, by and between the City of San Clemente, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 910 Calle Negocio , San Clemente, California, 92673 ("City") and **AKM Consulting Engineers**, an engineering consulting firm, with its principal place of business at 553 Wald, Irvine, CA 92618 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional **engineering consulting services** required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional engineering consulting services to public clients, is licensed in the State of California, if applicable, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional engineering consulting services for the **Cyprus Shore Storm Drain Relocation** (collectively referred to as "Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering consulting services necessary for the Project ("Services"). The Services are more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from May 31, 2022 to May 31, 2024 unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee.

Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Endorsement on PS&E/ Other Data. Consultant shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by Consultant, and where appropriate will indicate Consultant's authorized signature and professional registration number.

3.2.4 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.5 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: [INSERT NAME AND TITLE].

3.2.6 City's Representative. The City hereby designates David Rebensdorf, Utilities Director, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.7 Consultant's Representative. Consultant hereby designates Zeki Kayiran, Principal, or his/her designee, to act as its representative for the performance of this Agreement

("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.8 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.9 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.10 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Insurance. Consultant agrees to procure and maintain, at Consultant's expense all insurance specified in Exhibit "C" attached hereto and by this reference incorporated herein. Consultant shall require all subconsultants to carry the same policies and limits of insurance that the Consultant is required to maintain, unless otherwise approved in writing by the City.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "D" attached hereto and incorporated herein by reference. The total compensation shall not exceed Ninety Eight Thousand Four Hundred and Twelve Dollars (\$98,412) without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "D" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "D" may be adjusted each year at the time of renewal as set forth in Exhibit "D."

3.3.6 Labor Code Requirements.

3.3.6.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and Since the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its officials, officers, employees,

agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.6.2 Registration. If the Services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code sections 1725.5 and 1771.1 shall not apply to Services performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code sections 1725.5 and 1771.1.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time, with or without cause, by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: AKM Consulting Engineers, Inc.
553 Wald
Irvine, CA 92618
ATTN: Zeki Kayiran

City: City of San Clemente
910 Calle Negocio
San Clemente, CA 92673
ATTN: City Manager; or David Rebensdorf, Utilities
Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written

notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification.

3.5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex

or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

DRAFT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite of their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20__

ATTEST:

CITY CLERK of the City of
San Clemente, California

**APPROVED AS TO FORM:
BEST BEST & KRIEGER**

City Attorney

**APPROVED AS TO AVAILABILITY
OF FUNDING:**

Finance Authorization

DRAFT

("CONSULTANT")

By: _____

Its: _____

Dated: _____, 20__

EXHIBIT "A"
SCOPE OF SERVICES

DRAFT



Water Resources
Infrastructure
Construction Management

AKM Consulting Engineers
553 Wald
Irvine, CA 92618
Telephone: 949.753.7333 Facsimile: 949.753.7320
www.akmce.com

May 25, 2022

City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

Attention: Mr. David Rebensdorf, Utilities Director
Mr. Amir Ilkhanipour, Senior Civil Engineer

Subject: Proposal for the Cyprus Shore Storm Drain Relocation Project

In response to your request for proposal for the Cyprus Shore Storm Drain Relocation project within the Cyprus Shore Community, AKM Consulting Engineers (AKM) is pleased to submit the attached revised proposal, fee schedule and implementation schedule.

Key contact information for this proposal is:

Zeki Kayiran, P.E., Principal - AKM Consulting Engineers, Inc. - 553 Wald, Irvine, CA 92618
Phone: 949-753-7333 – FAX: 949-753-7320 – email: zkayiran@akmce.com

We appreciate the opportunity to submit our proposal and look forward to expeditiously provide this service to the City of San Clemente. Should you have any questions or require additional information, please do not hesitate to contact the undersigned or Nadeem Majaj at (949) 753-7333.

Very truly yours,

AKM Consulting Engineers

Zeki Kayiran, P.E.
Principal

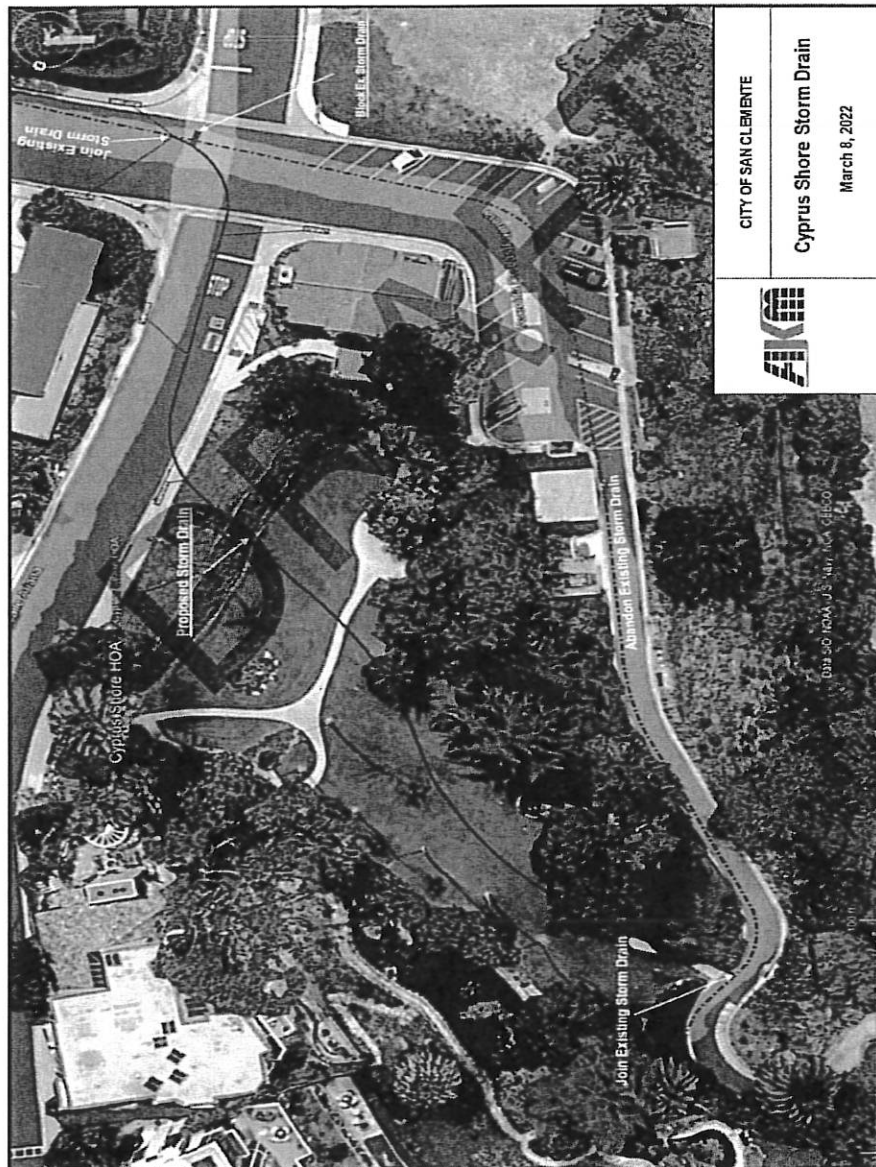
CYPRUS SHORE STORM DRAIN RELOCATION PROJECT

Section I – BACKGROUND AND APPROACH

The City of San Clemente (City) experienced a landslide on or about September 16, 2021 along bluffs bordering the Cyprus Shore Community. The City owns and operates various utilities in the vicinity including a storm drain, a gravity sewer collection system, and a sewer lift station, among others. The landslide damaged the Cyprus Shore storm drain and the sewer lift station.

The City hired AKM for the preparation of plans, specifications and engineers estimate for the relocation of the lift station. The City also intends to also relocate the storm drain from its existing alignment to an alignment which is generally depicted in the figure below (in red). This alignment is the result of the City considering several alternatives, in coordination with Cyprus Shore Home Owners Association, who owns the underlying right-of-way for the proposed/relocated storm drain.

The City requested AKM to prepare a proposal for the preparation of plans, specifications and engineers estimate for the storm drain relocation project.



Section II – SCOPE OF SERVICES

Based upon our understanding of the project, the following is the scope of work which AKM proposes to accomplish:

- Meet with the City and discuss the goals and criteria for the project. Of primary importance is to secure direction/understanding from the City on the required storm frequency for the design of the storm drain and the catch basins.
- Review existing record drawings, tract maps, topographic maps (2-foot contours), master plan of drainage document and other City-provided information.
- Conduct field investigations and measurements to assess existing site conditions.
- Identify needed pothole locations (for utility conflicts, if any), and request City's contractor to provide potholing, as needed.
- Identify geotechnical boring locations (primarily for groundwater elevations and pipe bedding and backfill), and request City's consultant to provide such, on an as needed basis.
- Complete a hydrology study of the areas tributary to the storm drain, in compliance with the Orange County Flood Control District (OCFCD) and City requirements.
- Identify locations for catch basins at the intersection of Avenida De Las Palmeras, and and Calle Ariana.
- Complete hydraulic analyses of the proposed storm drain system (including catch basins) in accordance with OCFCD criteria and City Requirements. Analyses will be conducted using the WSPG program (and hand computations where necessary).
- Prepare and submit construction plans at the 75% and 100% design levels for City review.
- Determine whether the City-purchased 36-inch HDPE pipe has the hydraulic capacity to convey the required storm discharge. In the event that a portion of the pipe (or all) does not have the capacity, AKM will recommend the appropriate size and material for the City's consideration.
- Prepare the Engineer's Estimate, which will be submitted at the 100% stage. The Engineer's Estimate will be based upon vendors' quotes, quantity estimates, and AKM's experience with similar work.
- Prepare legal descriptions and exhibits for the relocated storm drain within the Avenida De Las Palmeras and Calle Ariana intersection as well as through the park (along the proposed alignment).
- Prepare technical specifications delineating project issues and technical requirements. The technical specifications will describe design and coordination features of the work, as well as provide requirements for materials, equipment, installation, workmanship, and any special requirements. Project specifications will be submitted at the 75% and 100% levels. Final specifications will be signed and sealed by a registered professional engineer in the State of California.
- Submit the final construction package which includes: a) signed drawings; b) engineer's estimate and bid schedule; c) camera-ready specifications; d) copies of standard drawings; and f) electronic files for AutoCAD drawings and the specifications in Word format.
- Attend progress review meeting with City staff at the 75% plan submittal.
- Provide engineering support during the bidding and construction phases.

Assumptions

- The City will provide an electronic 2-foot contour intervals topographic file, in AutoCAD or Microstation format, which covers the entire Cyprus Shore watershed.
- The City will provide all available files/documents, which are essential for the preparation of the hydrology study.
- The City will coordinate approvals of the Cyprus Shore Community Home Owners Association and property owners, as needed.
- The City will be responsible for securing the required construction and permanent right-of-way easements.
- AKM's services do not include any environmental/regulatory tasks including those associated with the California Coastal Commission, Regional Water Quality Control Board, California Fish and Wildlife and US Army Corps of Engineers.
- AKM's services do not include geotechnical work. Any needed geotechnical services will be provided by the City's geotechnical consultant, through the City's project manager.
- AKM's services do not include potholing work. Any needed potholing services will be provided by the City's potholing contractor, through the City's project manager.

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CYPRUS SHORE STORM DRAIN RELOCATION PROJECT

FEE SCHEDULE

Task No.	Task Description	Burdened Hourly Rate	Project Director & QA/QC					Project Manager/Point of Contact	Project Engineer	Associate Engineer	CAD Operation	TOTAL LABOR HOURS (AKM)		TOTAL LABOR FEE (AKM)	Surveys & Legal Description Services (Sub-consultant)	TOTAL CYPRUS SHORE STORM DRAIN RELOCATION PROJECT FEE
			\$299	\$222	\$221	\$156	\$110					Clerical / Administrative	501			
TASK 1 - RESEARCH, FIELD INVESTIGATIONS AND MEETINGS																
	Task 1.1	Review of existing record drawings-										4		\$632		\$632
	Task 1.2	Conduct field investigation and measurements to assess existing site conditions.										12		\$1,896		\$1,896
	Task 1.3	Identify utilities that require potholing and verify depth and location										4		\$632		\$632
	Task 1.4	Attend one progress review meeting with City staff at the 75% plans submittal										9		\$2,076		\$2,076
	SUBTOTAL		3	3	3	3	3	20	0	0	0	29		\$ 5,236.00		\$ 5,236.00
TASK 2 - SURVEY & LEGAL DESCRIPTION																
	Task 2.1	Prepare legal descriptions and exhibits for the storm drain's proposed easements (to be conveyed from the Home Owners Association to the City).										4		\$884	\$3,300	\$4,184
	SUBTOTAL		0	0	4	4	0	0	0	0	0	4		\$ 884.00	\$ 3,300.00	\$ 4,184.00
TASK 3 - HYDROLOGY AND HYDRAULICS																
	Task 3.1	Complete a hydrology study in compliance with the Orange County Hydrology Manual and City requirements										80		\$13,988		\$13,988
	Task 3.2	Complete a hydraulic analysis of the proposed facility according to the City approved alignment through the park										56		\$9,980		\$9,980
	SUBTOTAL		0	12	24	100	0	0	0	0	0	136		\$ 23,888.00		\$ 23,888.00
TASK 4 - FINAL PLANS, SPECIFICATIONS AND COST ESTIMATES																
	Task 4.1	Complete 75% plans of design plans.										24		\$18,312		\$18,312
	Task 4.2	Prepare project Specifications at 75% design plans.										64		\$11,712		\$11,712
	Task 4.3	Complete/submit the Engineer's Estimate, based upon the 75% design plans.										22		\$3,876		\$3,876
	Task 4.4	Complete/submit 100% design plans which address all comments from the City and utility owners.										40		\$6,114		\$6,114
	Task 4.5	Complete/submit the Supplemental Specifications at 100% design plans.										32		\$5,618		\$5,618
	Task 4.6	Complete/submit the Engineer's Estimate, based upon the 100% design plans.										14		\$2,648		\$2,648
	Task 4.7	Complete Final Major plans. Specifications and Engineers Estimate, which incorporate all comments from the 100% submittal.										58		\$6,984		\$6,984
	SUBTOTAL		8	26	48	156	92	24	354					\$ 55,264.00		\$ 55,264.00
TASK 5 - CONSTRUCTION SUPPORT																
	Task 5.1	Provide engineering support during the bidding and construction phases										40		\$8,840		\$8,840
	SUBTOTAL		0	0	40	0	0	0	0	0	0	40		\$ 8,840.00		\$ 8,840
	TOTAL LABOR		11	41	119	276	92	24	563					\$ 94,112.00	\$ 3,300.00	\$ 97,412
Other Direct Costs																
														\$1,000		\$1,000
														\$95,112	\$1,300	\$96,412
			TOTAL ESTIMATED FEE FOR ENGINEERING													
			\$2,629	\$9,512	\$26,299	\$43,608	\$10,120	\$1,944								

IMPLEMENTATION SCHEDULE

IMPLEMENTATION SCHEDULE					
CYPRUS SHORE STORM DRAIN RELOCATION PROJECT					
TASK No.	TASK DESCRIPTION	Month 1	Month 2	Month 3	Month 4
TASK 1	Research and field investigations	■	■		
TASK 2	Survey and legal description	■	■		
TASK 3	Geotechnical	■	■		
TASK 4	Hydrology and Hydraulics	■	■	■	
TASK 5	Plans, Specifications and Engineers Estimate			■	■

EXHIBIT "A-I"
FEDERALLY REQUIRED PROVISIONS FOR SERVICES

N/A

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EXHIBIT "B"
SCHEDULE OF SERVICES

N/A

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EXHIBIT "C"
INSURANCE REQUIREMENTS

3.2.12 Insurance.

3.2.12.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.12.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); or (3) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence. Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(C) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

3.2.12.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.4 Professional Liability (Errors & Omissions):

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

3.2.12.5 Workers' Compensation:

(A) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.12.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.12.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability insurance shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the City, its officials, officers, employees, agents, and volunteers, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.2.12.8 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention greater than \$5,000 must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.12.9 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.12.10 Failure to Maintain Coverage. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement effective upon notice.

3.2.12.11 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A- VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.12.12 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.2.12.13 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Appendix are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.2.12.14 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and

volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

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EXHIBIT "D"
COMPENSATION

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, Los Angeles-Long Beach-Anaheim, CA.

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WORKER'S COMPENSATION INSURANCE CERTIFICATION

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated: _____, 20__

Consultant

By: _____

Title

Address

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