Council/Agency Meeting Held:_____ Deferred/Continued to:_____ ❑ Approved ❑ Conditionally Approved ❑ Denied	_____ City Clerk's Signature
Council Meeting Date: 8/15/2005	Department ID Number: PW 05-057

CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION

RECEIVED CITY CLERK CITY OF HUNTINGTON BEACH, CA 2005 AUG -4 A 8:41

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: PENELOPE CULBRETH-GRAFT, CITY ADMINISTRATOR

DSV **PREPARED BY:** PAUL EMERY, ACTING DIRECTOR OF PUBLIC WORKS

SUBJECT: **Award Contract for Construction of Downtown Water Main Replacement Project; CC-1262**

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue:
On July 14, 2005, bids were received for the Downtown Water Main Replacement Project, CC-1262. Staff recommends award to BRH-Garver West, Inc., the lowest responsive and responsible bidder. An appropriation from the Water Master Plan Fund (WMP) is required to complete the project.

Funding Source:
An appropriation of $3.5 million from the Water Master Plan undesignated fund balance, to Water Master Plan System Improvements, Account 50791017.82100 is requested. The project was originally budgeted in the Water Fund.

Recommended Action: Motion to:
1. Approve plans and specifications;
2. Accept the lowest responsive and responsible bid submitted by BRH-Garver West, Inc., in the amount of $2,791,103;
3. Authorize the Mayor and City Clerk to execute a construction contract in substantially the same form as the attached sample contract;
4. Appropriate $3.5 million to the project budget from the Water Master Plan Fund; and
5. Authorize the Director of Public Works to approve up to fifteen percent (15%) in construction change orders.

Alternative Action(s):
Reject all bids, and provide staff with alternative direction. This action would delay completion of the project.

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Analysis:
The approved Water Master Plan for the City of Huntington Beach (WMP) dated December 2000, recommends, "...the City undergo a cast iron replacement program starting with the downtown area." The goal of this recommendation is to systematically replace all unlined cast iron pipe. Unlined cast iron pipe is subject to both internal and external corrosion. Internal corrosion reduces the water main inside diameter, and external corrosion reduces water main reliability. The 2000 WMP recommends starting in the downtown area due to the advanced age of the water mains.

On July 14, 2005, bids for the Downtown Water Main Replacement Project CC1262, were received and publicly opened by the City Clerk and, are listed below in ascending order:

Bidding Contractor	Bid Amount	Corrected Amount
BRH-Garver West, Inc.	$2,788,603.00	$2,791,103.00
Majich Bros. Inc.	$2,849,009.25	$2,848,009.25
J. Fletcher Creamer & Son	$3,353,124.00	$3,353,124.00

Minor addition errors did not alter the low bid award. Bids amounts were verified. The reference check for BRH-Garver West, Inc. provided acceptable responses from past clients. The Engineer's cost estimate is $3 million.

In addition to construction contract costs, the project will require soils and materials testing by outside firms. The City has entered into on-call contracts with several reliable providers for these services. City staff will provide construction management and engineering support.

The current fiscal year budget allocated $4 million for water main replacement from the Water Fund. However, this project was specified in the 2000 Water Master Plan, and is more appropriately funded by the Water Master Plan Fund. It is recommended to appropriate $3.5 million from the Water Master Plan Fund to complete this project. Funds budgeted in the original project will be returned to the Water Fund balance.

Resolution 2002-119 authorizes the Director of Public Works to approve up to ten percent (10%) of the construction cost for change orders. Due to the complexity and location of this project within the old downtown alleys, a waiver of Resolution 2002-119 and authorization to expend up to fifteen percent (15%) in construction change orders is requested.

Public Works Commission Action:
On March 16, 2005, the Public Works Commission reviewed and recommended this project by a vote of 5-0-2 (Harlow and Spencer absent).

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Environmental Status:
This project consists of the replacement of existing City-owned water mains, involving negligible or no expansion of capacity. The project is Categorically Exempt pursuant to Class 2, Section 15302(c) of CEQA. The project is also excluded from a Coastal Development Permit based on Paragraph II (2), of Repair Maintenance and Utility Hook-Up Exclusions from Permit Requirements, of the California Coastal Commission.

Attachment(s):

City Clerk's Page Number	No.	Description
4	1.	Location Map
6	2.	Sample Construction Contract
29	3.	Fiscal Impact Statement

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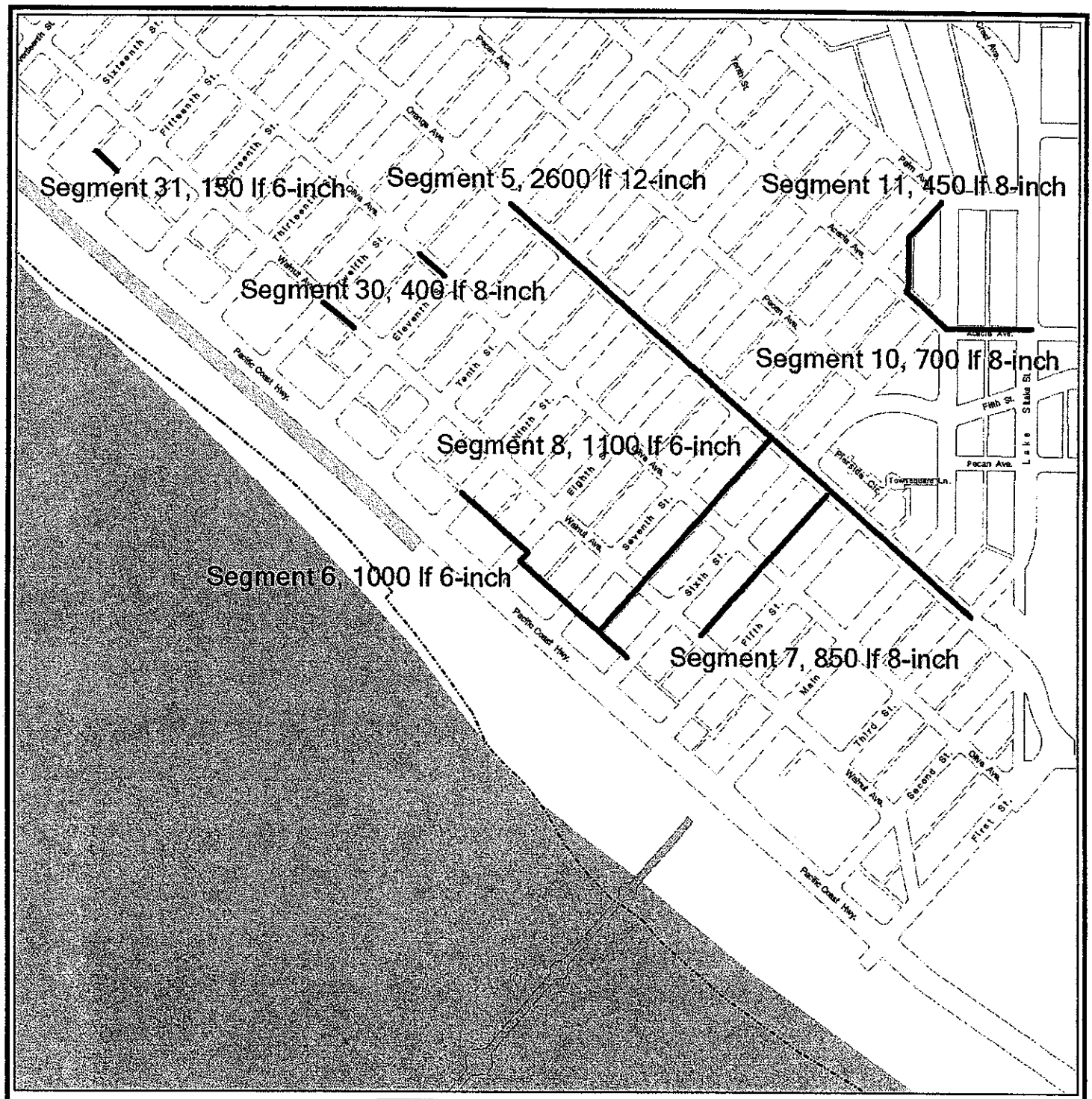
ATTACHMENT #1



CC 1262 Water Main Replacement

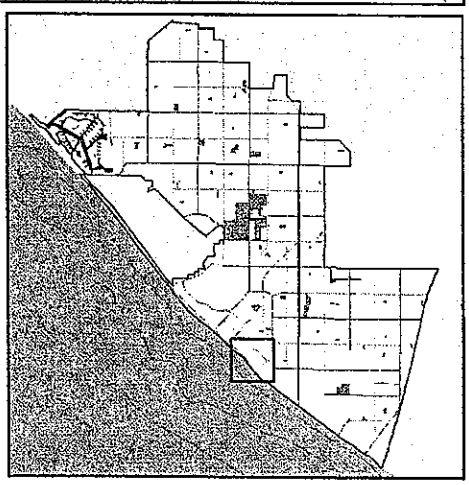
Map produced by information contained in the City of Huntington Beach Information Services Department Geographic Information System. Information warranted for City use only. Huntington Beach does not guarantee its completeness or accuracy.
Map Produced on 3/4/2005

N W E S

0 600 1200

One inch equals 600 feet

STREET NAMES
RIGHT OF WAYS
CITY BOUNDARY
ISOBATHS
PARKS
PIER



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ATTACHMENT #2

CITY FUNDED CONSTRUCTION CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND

_____

FOR

_____

THIS AGREEMENT ("Agreement") made and entered into this _____ day of _____ 20___, by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY," and _____, a California _____, hereinafter referred to as "CONTRACTOR."

WHEREAS, CITY has solicited bids for a public works project, hereinafter referred to as "PROJECT," more fully described as _____ _____in the City of Huntington Beach; and

CONTRACTOR has been selected to perform said services,

NOW, THEREFORE, in consideration of the promises and agreements hereinafter made and exchanged, the parties covenant and agree as follows:

1. STATEMENT OF WORK; ACCEPTANCE OF RISK

CONTRACTOR shall complete and construct the PROJECT pursuant to this Agreement and the Contract Documents (as hereinafter defined) and furnish, at its own cost and expense, all labor, plans, tools, equipment, supplies, transportation, utilities and all other items, services and facilities necessary to complete and construct the PROJECT in a good and workmanlike manner.

CONTRACTOR agrees to fully assume the risk of all loss or damage arising out of the nature of the PROJECT, during its progress or prior to acceptance by CITY, from

the action of the elements, from any unforeseen difficulties which may arise or be encountered in the prosecution of work, and for all other risks of any description in connection with the work, including, but not limited to, all expenses incurred by or in consequence of the suspension or discontinuance of work, except such as are herein expressly stipulated to be borne by CITY, and for well and faithfully completing the work within the stipulated time and in the manner shown and described in this Agreement, and in accordance with the requirements of CITY for the compensation set forth in the accepted bid proposal.

2. ACCEPTANCE OF CONDITIONS OF WORK; PLANS AND SPECIFICATIONS

CONTRACTOR acknowledges that it is fully familiar with all the terms, conditions and obligations of this Agreement and the Contract Documents (as defined below in this Section), the location of the job site, and the conditions under which the work is to be performed, and that it enters into this Agreement based upon its thorough investigation of all such matters and is relying in no way upon any opinions or representations of CITY.

It is agreed that the Contract Documents are incorporated into this Agreement by this reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its subcontractors, if any, shall be bound by the Contract Documents insofar as they relate in part or in any way, directly or indirectly, to the work covered by this Agreement.

"Contract Documents" as defined herein mean and include:

A. This Agreement;

B. Bonds covering the work herein agreed upon;

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C. The CITY's standard Plans and Specifications and special contractual provisions, including those on file in the office of the Director of Public Works of CITY and adopted by the City Council, and any revisions, amendments or addenda thereto;

D. The current edition of *Standard Specifications for Public Works Construction*, published by Builders' News, Inc., 10801 National Boulevard, Los Angeles, CA 90064, and all amendments thereto, written and promulgated by the Southern California chapter of the American Public Works Association and the Southern California District Associated General Contractors of the California Joint Cooperative Committee;

E. Bid documents including the Notice Inviting Bids, the Special Instructions to Bidders and the CONTRACTOR's proposal, (which is attached hereto as **Exhibit "A"** and incorporated herein by this reference);

F. The particular Plans, Specifications, Special Provisions and Addenda applicable to the PROJECT. Anything mentioned in the Specifications and not indicated in the Plans or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of a discrepancy between any Plans, Specifications, Special provisions, or Addenda, the matter shall be immediately submitted by CONTRACTOR to the Department of Public Works of CITY (hereinafter referred to as "DPW"), and

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CONTRACTOR shall not attempt to resolve or adjust the discrepancy without the decision of DPW, save only at its own risk and expense.

Should there be any conflict between the terms of this Agreement and the bid or proposal of CONTRACTOR, then this Agreement shall control and nothing herein shall be considered as an acceptance of the terms of the bid or proposal which is in conflict herewith.

3. COMPENSATION

CITY agrees to pay and CONTRACTOR agrees to accept as full compensation for the faithful performance of this Agreement, subject to any additions or deductions made under the provisions of this Agreement or the Contract Documents, a sum not to exceed _____ Dollars ($_____), as set forth in the Contract Documents, to be paid as provided in this Agreement.

4. COMMENCEMENT OF PROJECT

CONTRACTOR agrees to commence the PROJECT within ten (10) working days after the Notice To Proceed is issued and diligently prosecute the PROJECT to completion within _____ (___) consecutive _____ from the day the Notice to Proceed is issued by DPW, excluding delays provided for in this Agreement.

5. TIME OF THE ESSENCE

The parties hereto recognize and agree that time is of the essence in the performance of this Agreement and each and every provision of the Contract Documents.

CONTRACTOR shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of its work in conformance with the progress schedule set forth in the Contract Documents. CONTRACTOR shall coordinate its work with the work of all

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other contractors, subcontractors, and CITY forces working on the PROJECT in a manner that will facilitate the efficient completion of the PROJECT and in accordance with the terms and provisions of this Agreement. CITY shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which the various portions of the work shall be performed and the priority of the work of other contractors, subcontractors and CITY forces and, in general, all matters concerning the timely and orderly conduct of the work of CONTRACTOR on the premises.

6 CHANGES

CONTRACTOR shall adhere strictly to the plans and specifications set forth in the Contract Documents unless a change therefrom is authorized in writing by DPW. CONTRACTOR agrees to make any and all changes, furnish materials and perform all work necessary within the scope of the PROJECT as DPW may require in writing. Under no condition shall CONTRACTOR make any changes without the prior written order or acceptance of DPW, and CITY shall not pay any extra charges made by CONTRACTOR that have not been agreed upon in writing by DPW.

When directed to change the work, CONTRACTOR shall submit immediately to DPW a written cost proposal reflecting the effect of the change. Should DPW not agree to such cost proposal, the work shall be performed according to the changes ordered in writing by DPW and the proper cost thereof shall be negotiated by the parties upon cost and pricing data submitted by CONTRACTOR; thereupon, CITY will promptly issue an adjusted change order to CONTRACTOR and the contract price will be adjusted upward or downward accordingly.

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7. NOTICE TO PROCEED

No work, services, material, or equipment shall be performed or furnished under this Agreement unless and until a Notice to Proceed has been given to CONTRACTOR by CITY. CITY does not warrant that the work will be available on the date the Notice to Proceed is issued. In the event of a delay in commencement of the work due to unavailability of the job site, for any reason, relief to CONTRACTOR shall be limited to a time extension equal to the delay due to such unavailability.

8. BONDS

Only bonds issued by California admitted sureties will be accepted. CONTRACTOR shall, prior to its performance of this Agreement, furnish the following two (2) bonds approved by the City Attorney: One in the amount of one hundred percent (100%) of the contract price to guarantee the CONTRACTOR's faithful performance of the work, and one in the amount of one hundred percent of the contract price to guarantee payment of all claims for labor and materials furnished.

In addition, CONTRACTOR shall submit to CITY a bond in the amount of one hundred percent (100%) of the final contract price, including all change orders, to warrant such performance for a period of one (1) year after CITY's acceptance thereof within ten (10) days of filing of the Notice of Completion.

9. WARRANTIES

CONTRACTOR unconditionally guarantees all work done under this Agreement including, but not limited to, any workmanship, installation, fabrication, material or structural facilities constructed. CONTRACTOR, within ten (10) days after notice by CITY of any defect in the work, shall have the option to make appropriate repairs or replace

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the defective item or items. Upon expiration of such ten (10) day period, CITY may then make appropriate repair or replacement at CONTRACTOR's risk and own cost and expense.

10. INDEPENDENT CONTRACTOR

It is understood and agreed that CONTRACTOR is, and shall be, acting at all times hereunder as an independent contractor and not an employee of CITY. CONTRACTOR shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONTRACTOR and its officers, agents and employees and all business licenses, if any, in connection with the PROJECT and/or the services performed hereunder.

11. LIQUIDATED DAMAGES/DELAYS

It is agreed by the parties hereto that in case the total work called for hereunder is not in all parts and requirements finished or completed within the number of calendar days as set forth herein, damage will be sustained by CITY; and that it is, and would be, impractical and extremely difficult to ascertain and determine the actual damage which CITY would sustain in the event of and by reason of such delay. It is, therefore, agreed that CONTRACTOR will pay to CITY, as liquidated damages and not as a penalty, the sum of _____ Dollars ($_____) per day for each and every working day's delay in completing the work in excess of the number of working/calendar days set forth herein, which represents a reasonable endeavor by the parties hereto to estimate a fair compensation for the foreseeable damages CITY would sustain in the event of and by reason of such delay; and CONTRACTOR agrees to pay these damages herein provided, and

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further agrees that CITY may deduct the amount thereof from any monies due or that may become due to CONTRACTOR hereunder.

CONTRACTOR will be granted an extension of time and will not be assessed damages for any portion of the delay in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR, including, but not limited to, acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, unsuitable weather, or delays of subcontractors due to such causes.

CONTRACTOR shall, within fifteen (15) days from the beginning of any such delay (unless DPW shall grant a further period of time), notify DPW in writing of the cause of the delay and CITY shall extend the time for completing the work if, in its judgment, the findings of fact thereon justify the delay; and the decision of DPW shall be conclusive on the parties hereto.

Should CONTRACTOR be delayed in the prosecution or completion of the work by the act, neglect or default of CITY, or should CONTRACTOR be delayed by waiting for materials required by this Agreement to be furnished by CITY, or by damage caused by fire or other casualty at the job site for which CONTRACTOR is not responsible, or by the combined action of the workers, in no way caused by or resulting from default or collusion on the part of CONTRACTOR, or in the event of a lockout by CITY, then the time herein fixed for the completion of the work shall be extended by the number of days CONTRACTOR has thus been delayed, but no allowance or extension shall be made unless a claim therefor is presented in writing to CITY within fifteen (15) days of the commencement of such delay.

No claims for additional compensation or damages for delays, irrespective of the cause thereof, and including without limitation the furnishing of materials by CITY or

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delays by other contractors or subcontractors, will be allowed and an extension of time for completion shall be the sole remedy of CONTRACTOR.

12. DIFFERING SITE CONDITIONS

A. Notice: CONTRACTOR shall promptly, and before such conditions are disturbed, notify DPW in writing of:

(1) Subsurface or latent physical conditions at the job site differing materially from those indicated in this Agreement or the Contract Documents; or

(2) Unknown physical conditions at the job site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent to work of the character to be performed under this Agreement. DPW shall promptly investigate the conditions and if it finds that such conditions do materially so differ and cause an increase or decrease in the time required for performance of any part of the work under this Agreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the agreement modified in writing accordingly.

B. Time Extension: No claim of CONTRACTOR under this Section shall be allowed unless CONTRACTOR has given the notice required hereunder provided, however, the time prescribed therefor may be extended by CITY.

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13. VARIATIONS IN ESTIMATED QUANTITIES

The quantities listed in the bid schedule will not govern final payment. Payment to CONTRACTOR will be made only for the actual quantities of contract items used in construction of the PROJECT, in accordance with the plans and specifications. Upon completion of the PROJECT, if the actual quantities used are either more than or less than the quantities listed in the bid schedule, the bid price shall prevail subject to the provisions of this Section. DPW may, at its sole discretion, when warranted by the facts and circumstances, order an equitable adjustment, upwards or downwards, in payment to CONTRACTOR where the actual quantities used in construction of the PROJECT are in variation to the quantities listed in the bid schedule. No claim by CONTRACTOR for an equitable adjustment in price or time for completion shall be allowed if asserted after final payment under this Agreement. If the quantity variation is such as to cause an increase in the time necessary for completion, DPW shall ascertain the facts and circumstances and make such adjustment for extending the completion date as in its sole judgment the findings warrant.

14. PROGRESS PAYMENTS

Each month DPW will make an estimate in writing of the work performed by CONTRACTOR and the value thereof. From each progress estimate, ten percent (10%) will be deducted and retained by CITY and the remainder of the progress estimate, less the amount of all previous payments since commencement of the work, will be paid to CONTRACTOR.

When CONTRACTOR has, in the judgment of DPW, faithfully executed fifty percent (50%) or more of the value of the work as determined from the bid schedule, and if DPW finds that satisfactory progress has been and is being made, CONTRACTOR may be paid such sum as will bring the payments of each month up to one hundred percent (100%) of

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the value of the work completed since the commencement of the PROJECT, as determined in its sole discretion by DPW, less all previous payments and less all previous retained amounts. CITY's final payment to CONTRACTOR, if unencumbered, or any part thereof unencumbered, shall be made thirty-five (35) days after the acceptance of the work and the filing of a Notice of Completion by CITY. Payments shall be made on demands drawn in the manner required by law, each payment to be accompanied by a certificate signed by DPW, affirming that the work for which payment is demanded has been performed in accordance with the terms of the Agreement and that the amount stated in the certificate is due under the terms of the Agreement. Partial payments on the contract price shall not be considered as a acceptance of any part of the work.

15. WITHHELD CONTRACT FUNDS, SUBSTITUTION OF SECURITIES

At the request and at the sole cost and expense of CONTRACTOR, who shall retain beneficial ownership and receive interest, if any thereon, CITY shall permit the substitution and deposit therewith of securities equivalent to the amount of any monies withheld by CITY to ensure performance under the terms of this Agreement.

16. AFFIDAVITS OF SATISFACTION OF CLAIMS

After the completion of the work contemplated by this Agreement, CONTRACTOR shall file with DPW its affidavit stating that all workers and persons employed, all firms supplying materials and all subcontractors working upon the PROJECT have been paid in full and that there are no claims outstanding against the PROJECT for either labor or material, except certain items, if any, to be set forth in CONTRACTOR's affidavit covering disputed claims, or items in connection with Notices to Withhold, which have been filed under the provisions of the statutes of the State of California.

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17. WAIVER OF CLAIMS

The acceptance by CONTRACTOR of the payment of the final certificate shall constitute a waiver of all claims against CITY under or arising out of this Agreement.

18. INDEMNIFICATION, DEFENSE, HOLD HARMLESS

CONTRACTOR hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all, claims, damages, losses, expenses, judgments, demands defense costs, and consequential damage or liability of any kind or nature, however caused, including those resulting from death or injury to CONTRACTOR's employees and damage to CONTRACTOR's property, arising directly or indirectly out of the obligations or operations herein undertaken by CONTRACTOR, caused in whole or in part by any negligent act or omission of the CONTRACTOR, any subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including but not limited to concurrent active or passive negligence, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY. CONTRACTOR will conduct all defense at its sole cost and expense and CITY shall approve selection of CONTRACTOR's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

19. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

Pursuant to *California Labor Code* Section 1861, CONTRACTOR acknowledges awareness of Section 3700 *et seq.* of this Code, which requires every employer

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to be insured against liability for workers' compensation; CONTRACTOR covenants that it will comply with such provisions prior to commencing performance of the work hereunder.

CONTRACTOR shall obtain and furnish to City workers' compensation and employer's liability insurance in an amount of not less than the State statutory limits.

CONTRACTOR shall require all subcontractors to provide such workers' compensation and employer's liability insurance for all of the subcontractors' employees. CONTRACTOR shall furnish to CITY a certificate of waiver of subrogation under the terms of the workers' compensation and employer's liability insurance and CONTRACTOR shall similarly require all subcontractors to waive subrogation.

20. INSURANCE

In addition to the workers' compensation and employer's liability insurance and CONTRACTOR's covenant to defend, hold harmless and indemnify CITY, CONTRACTOR shall obtain and furnish to CITY, a policy of general public liability insurance, including motor vehicle coverage covering the PROJECT. This policy shall indemnify CONTRACTOR, its officers, employees and agents while acting within the scope of their duties, against any and all claims arising out or in connection with the PROJECT, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars ($1,000,000) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars ($1,000,000) for this PROJECT. This policy shall name CITY, its officers, elected or appointed officials, employees, agents, and volunteers as Additional Insureds, and shall specifically provide that any other insurance

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coverage which may be applicable to the PROJECT shall be deemed excess coverage and that CONTRACTOR's insurance shall be primary.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage.

21. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED ENDORSEMENTS

Prior to commencing performance of the work hereunder, CONTRACTOR shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Agreement; the certificates shall:

1. provide the name and policy number of each carrier and policy;
2. state that the policy is currently in force; and
3. promise to provide that such policies will not be canceled or modified without thirty (30) days' prior written notice of CITY.

CONTRACTOR shall maintain the foregoing insurance coverages in force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverages shall not derogate from the CONTRACTOR's defense, hold harmless and indemnification obligations as set forth under this Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of all the policies of insurance. CONTRACTOR shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

CONTRACTOR shall provide a separate copy of the additional insured endorsement to each of CONTRACTOR's insurance policies, naming CITY, its officers,

elected and appointed officials, employees, agents and volunteers as Additional Insureds, to the City Attorney for approval prior to any payment hereunder.

22. NOTICE OF THIRD PARTY CLAIM

Pursuant to *Public Contracts Code* §9202, CITY shall provide notice to CONTRACTOR of receipt of any claim filed with CITY or a court of competent jurisdiction which arises out of performance of this agreement within ten (10) days of receipt of such claim or claims.

23. DEFAULT AND TERMINATION

If CONTRACTOR fails or refuses to prosecute the work hereunder with diligence, or fails to complete the work within the time specified, or is adjudged bankrupt or makes an assignment for the benefit of creditors or becomes insolvent, or violates any provision of this Agreement or the Contract Documents, CITY may give CONTRACTOR notice in writing of its intention to terminate this Agreement. Unless the violation is cured within ten (10) days after such Notice of Intention has been served on CONTRACTOR, CITY may, without prejudice to any other remedy it may have, terminate this Agreement upon the expiration of that time. Upon such default by CONTRACTOR, CITY may elect not to terminate this Agreement; in such event CITY may make good the deficiency in which the default consists and deduct the resulting costs from the progress payments then or to become due to CONTRACTOR.

If it is subsequently determined by a court of competent jurisdiction that CITY's termination of this Agreement under this Section was wrongful, such termination shall be converted to a termination for convenience under Section 23 and any damages shall be assessed as set forth in Section 23.

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24. TERMINATION FOR CONVENIENCE

CITY may terminate this Agreement for convenience at any time with or without cause, and whether or not PROJECT is fully complete upon seven (7) calendar days written notice to CONTRACTOR. In the event of termination, under this Section CITY shall pay CONTRACTOR for value of work in place on the PROJECT through the termination period plus seven and one-half percent (7 ½ %) for overhead and profit less all such payments already made. Such payment by CITY shall be CONTRACTOR's sole and exclusive remedy for termination by CITY for its convenience and CITY shall have not further obligation to CONTRACTOR.

25. DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CONTRACTOR agrees that upon completion of the work to be performed hereunder, or upon expiration or earlier termination of this Agreement, all original plans, specifications, drawings, reports, calculations, maps and other documents pertaining to this Agreement shall be delivered to CITY and become its sole property at no further cost.

26. NONASSIGNABILITY

CONTRACTOR shall not sell, assign, transfer, convey or encumber this Agreement, or any part hereof, or any right or duty created herein, without the prior written consent of CITY and the surety.

27. CITY EMPLOYEES AND OFFICIALS

CONTRACTOR shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of the *California Government Code*.

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28. STOP NOTICES; RECOVERY OF ADMINISTRATIVE COSTS

CITY shall be entitled to all reasonable administrative costs and necessary disbursements arising out of the processing of Stop Notices, Notices to Withhold, or any similar legal document. This obligation shall be provided for in the labor and materials payment bond required of CONTRACTOR. CITY may charge an administrative fee of One Hundred Dollars ($100) for every Stop Notice filed in excess of two (2), regardless of whether or not CITY is named in an action to enforce such stop notices. CITY may set off any unreimbursed cost or expense so incurred against any sum or sums owed by CITY to CONTRACTOR under this Agreement.

29. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to CONTRACTOR's agent (as designated in Section 1 hereinabove) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below; provided that CITY and CONTRACTOR may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, reputable overnight carrier or U. S. certified mail-return receipt requested:

TO CITY:

City of Huntington Beach
ATTN:_____
2000 Main Street
Huntington Beach, CA 92648

TO CONTRACTOR:

_____
_____
_____
_____

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30. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of maters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

31. IMMIGRATION

CONTRACTOR shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of *United States Code* Section 1324*a* regarding employment verification.

32. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONTRACTOR and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONTRACTOR understands that pursuant to Huntington Beach City Charter Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONTRACTOR.

33. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party

shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

34. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

35. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

36. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall,

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irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

37. CONSENT

Where CITY's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be consent/approval to any subsequent occurrence of the same or any other transaction or event.

38. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement shall so survive.

39. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

40. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. This Agreement, and the attached **Exhibit "A"**, contain the entire agreement between the parties respecting the subject matter

of this Agreement, and supersede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized offices the day, month and year first above written.

CONTRACTOR

_____

_____

By:_____

_____
print name

ITS: *(circle one)* Chairman/President/Vice President

AND

By:_____

_____
print name

ITS: *(circle one)* Secretary/Chief Financial Officer/Asst. Secretary - Treasurer

REVIEWED AND APPROVED:

_____
City Administrator

CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

INITIATED AND APPROVED:

_____
Director of Public Works

E-19,20

CITY FUNDED CONSTRUCTION CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND

_____

FOR

_____

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E-19.28

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E-19.29

ATTACHMENT #3

CITY OF HUNTINGTON BEACH
INTERDEPARTMENTAL COMMUNICATION

TO: PENELOPE CULBRETH-GRAFT, DPA, CITY ADMINISTRATOR

FROM: DAN T.VILLELLA, CPA, FINANCE OFFICER

SUBJECT: FIS 2005 – 26 AWARD CONTRACT FOR CONSTRUCTION OF DOWNTOWN WATERMAIN REPLACEMENT PROJECT; CC-1262

DATE: JULY 25, 2005

As required by Resolution 4832, this Fiscal Impact Statement has been prepared for "Award Contract for Construction of Downtown Watermain Replacement Project; CC-1262."

If the City Council approves this action (total appropriation $3.5 million), the estimated fund balance of the Water Master Plan Fund at September 30, 2005 will be reduced to $27,125,000

Dan Villella,
Finance Officer

E-19.30