Council Meeting of
April 22, 2008

Honorable Mayors and Members
of the City Council
City Hall
Torrance, California

Members of Council:

SUBJECT: Public Works – Award of Consulting Services Agreement to RMS Engineering and Design Inc. for engineering services for design of T-1 vault. Expenditure: $56,505.

RECOMMENDATION

Recommendation of the Public Works Director that the City Council award a Consulting Services Agreement to RMS Engineering and Design Inc., in the amount of $56,505, for engineering services for design of T-1 vault.

Funding

Funding for this agreement is available from Water Enterprise Funds, T-1 Vault Upgrades Project (CIP No. I-104).

BACKGROUND/ANALYSIS

The City of Torrance owns and operates five flow control vaults for our potable water connections to the Southern California Metropolitan Water District (MWD). The vaults are all below grade steel reinforced concrete structures and pursuant to Title 8 of the California Code of Regulations are permit required confined spaces. Permit required confined spaces require the worker entering the vault to wear a harness and tether line and for workers outside the vault to pull the worker out should there be an injury or the worker become unconscious. One of the risks associated with confined spaces is a worker succumbing to toxic fumes and losing consciousness. If this happens, it is important to remove the worker without another worker entering the vault.

Four of the five vaults consist of one or two pipes with meters that extend straight through the vault and have access hatches that would allow a worker to be easily removed from the vaults.

The T-1 flow control vault was constructed circa 1951 as the first MWD interconnection. The facility is located in the middle of 190th Street, just west of Western Avenue (Attachment B). During recent inspections by the City's Risk Manager, the T-1 Flow Control Vault was found not to be in compliance with confined space regulations as described in the California Code of Regulations, Title 8. This vault has the inlet and outlet pipes entering the vault from under the roof of the vault, and four pipes crossing

inside the vault. Access is obtained by one hatch in the corner of the vault, or a tunnel in the other corner of the vault. Due to this configuration a worker would have to climb one or more of the pipes as required by most tasks. Should there be a problem, there is a very high likelihood that the worker's tether line would get caught on a pipe fitting and the worker would not be able to be retrieved.

This project would remodel the T-1 flow control vault to have only two pipes with meters that would extend straight through the vault. The vault will have two worker access hatches and two hatches for meter removal. This configuration is consistent with the other four MWD interconnections. It would allow the worker to work on both meters without crossing over a pipe, i.e., without anything for the tether line to get caught on. A new ventilation system would also be provided to further increase the safety of workers.

A Request for Proposals was sent to five engineering consulting firms for the design of the T-1 vault upgrades. RMS Engineering and Design Inc. was the only firm that responded. RMS Engineering and Design Inc. has extensive structural engineering experience and has successfully completed designs on reinforced concrete structures for many water and wastewater treatment plants and systems. Their fee is reasonable.

Funding for this project is available from CIP No. I-104, approved by City Council on July 17, 2007. The budget for CIP No. I-104 is $400,000.

Respectfully submitted,

ROBERT J. BESTE
Public Works Director

By John Dettle
Engineering Manager

CONCUR:

Robert J. Beste
Public Works Director

LeRoy J. Jackson
City Manager

Attachments: A. Consulting Services Agreement
B. Location Map

CONSULTING SERVICES AGREEMENT

This CONSULTING SERVICES AGREEMENT ("Agreement") is made and entered into as of April 22, 2008 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and RMS Engineering and Design, Inc., a California Corporation ("CONSULTANT").

RECITALS:

A. CITY wishes to retain the services of an experienced and qualified CONSULTANT to provide Structural Engineering Services for T-1 vault.

B. CONSULTANT represents that it is qualified to perform those services.

AGREEMENT:

1. SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT will provide the services listed in the Scope of Services attached as Exhibit A. CONSULTANT warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through April 22, 2009.

3. COMPENSATION

A. CONSULTANT's Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Compensation Schedule attached as Exhibit B, provided, however, that in no event will the total amount of money paid the CONSULTANT, for services initially contemplated by this Agreement, exceed the sum of $56, 505.00 ("Agreement Sum"), unless otherwise first approved in writing by CITY.

B. Schedule of Payment.

Provided that the CONSULTANT is not in default under the terms of this Agreement, upon presentation of an invoice, CONSULTANT will be paid monthly the fees described in Paragraph 3.A. above, according to the Compensation Schedule. Payment will be due within 30 days after the date of the monthly invoice.

4. TERMINATION OF AGREEMENT

A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.

2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONSULTANT will:

   a. cease operations as directed by CITY in the notice;
   b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
   c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3. In case of such termination for CITY's convenience, CONSULTANT will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

2. In the event this Agreement is terminated for cause by the default of the CONSULTANT, the CITY may, at the expense of the CONSULTANT and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONSULTANT under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONSULTANT and its surety from liability for the default. Under these circumstances, however, the CONSULTANT and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONSULTANT or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONSULTANT or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONSULTANT's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONSULTANT has been given notice and an opportunity to present evidence in mitigation.

5. FORCE MAJEURE

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. RETENTION OF FUNDS

CONSULTANT authorizes CITY to deduct from any amount payable to CONSULTANT (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of CONSULTANT's negligent acts or omissions or willful misconduct in performing or failing to perform CONSULTANT's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONSULTANT, or any indebtedness exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONSULTANT to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

7. CITY REPRESENTATIVE

Robert J. Beste, Public Works Director is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those

actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONSULTANT.

8. CONSULTANT REPRESENTATIVE(S)

The following principal(s) of CONSULTANT are designated as being the principal(s) and representative(s) of CONSULTANT authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Roger M. Sage, Principal

9. INDEPENDENT CONTRACTOR

The CONSULTANT is, and at all times will remain as to CITY, a wholly independent contractor. Neither CITY nor any of its agents will have control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as otherwise set forth in this Agreement. The CONSULTANT may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

10. BUSINESS LICENSE

The CONSULTANT must obtain a City business license prior to the start of work under this Agreement, unless CONSULTANT is qualified for an exemption.

11. OTHER LICENSES AND PERMITS

CONSULTANT warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. FAMILIARITY WITH WORK

By executing this Agreement, CONSULTANT warrants that CONSULTANT (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONSULTANT warrants that CONSULTANT has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONSULTANT discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONSULTANT must immediately inform CITY of that fact and may not proceed except at CONSULTANT's risk until written instructions are received from CITY.

13. CARE OF WORK

CONSULTANT must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

14. CONSULTANT'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS

Records of the CONSULTANT's time pertaining to the project, and records of accounts between CITY and the CONSULTANT, will be kept on a generally recognized accounting basis. CONSULTANT will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to CITY during normal working hours. CONSULTANT will maintain these records for three years after final payment.

15. INDEMNIFICATION

CONSULTANT will indemnify, pay for cost of defense, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss. The obligation to indemnify, pay for cost of defense, and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONSULTANT, its officers, employees, agents, subconsultants or vendors. It is further agreed, CONSULTANT's obligations to indemnify, defend and hold harmless will apply, but only to the extent covered by Consultant's negligence, even in the event of concurrent negligence on the party of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. It is further agreed that RMS Engineering & Design is not responsible for any claims arising from traffic accidents and injuries related to traffic.

16. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of CITY will be personally liable to CONSULTANT, in the event of any default or breach by the CITY or for any amount that may become due to CONSULTANT.

17. INSURANCE

A. CONSULTANT must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:

   a. Primary Bodily Injury with limits of at least $500,000 per person, $1,000,000 per occurrence; and

   b. Primary Property Damage of at least $250,000 per occurrence; or

   c. Combined single limits of $1,000,000 per occurrence.

2. General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and

contractual obligations with combined single limits of coverage of at least $1,000,000 per occurrence.

3. Professional liability insurance with limits of at least $1,000,000 per occurrence.

4. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least $1,000,000.

B. The insurance provided by CONSULTANT will be primary and non-contributory

C. CITY, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

D. CONSULTANT must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.

E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to CITY.

18. <u>SUFFICIENCY OF INSURERS AND SURETIES</u>

Insurance or bonds required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the CONSULTANT agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONSULTANT will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

19. <u>CONFLICT OF INTEREST</u>

A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation,

preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

20. NOTICE

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

CONSULTANT:	RMS Engineering and Design, Inc. 537 Newport Center Drive, #294 Newport Beach, CA 92660 Fax: (949) 721-0920
CITY:	City Clerk City of Torrance 3031 Torrance Boulevard Torrance, CA 90509-2970 Fax: (310) 618-2931

B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

21. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or CONSULTANT without the prior written consent of the other.

22. INTEGRATION; AMENDMENT

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

23. INTERPRETATION

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

24. SEVERABILITY

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

25. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement.

26. GOVERNING LAW; JURISDICTION

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

27. COMPLIANCE WITH STATUTES AND REGULATIONS

CONSULTANT will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

28. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

29. ATTORNEY'S FEES

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement

(whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. EXHIBITS

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

31. CONSULTANT'S AUTHORITY TO EXECUTE

The person(s) executing this Agreement on behalf of the CONSULTANT warrant that (i) the CONSULTANT is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONSULTANT; (iii) by so executing this Agreement, the CONSULTANT is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONSULTANT is bound.

CITY OF TORRANCE
a Municipal Corporation

_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers
City Clerk

APPROVED AS TO FORM:
JOHN L. FELLOWS III
City Attorney

By:_____

RMS Engineering & Design, Inc.
a California Corporation

By:_____
Roger M. Sage
Principal

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Compensation Schedule

Revised: 1/30/01

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT "A"

RMS scope of work:

Structural:

On this project, RMS will determine the capacity of the vault's top slab and will decide if we need to add new concrete beams above or below the slab to provide support at the new opening areas. Determining factors will the headroom issue below and the depth of soil cover above. RMS would look into constructing new concrete beams above and below the slab to work in combination with the existing slab as a composite section. It is our understating the vault will be subject to vehicular traffic loads.

RMS will investigate into either reinforcing the existing vault top slab or completely replacing it with a slab that can be cast at the site and lifted onto position over the vault.

RMS will thicken the vault side walls, as required, to allow for penetration of new piping. At the present time, we do believe that the vault structure can be reinforced and construction of new vault will not be necessary, unless considerable corrosion has developed in the existing reinforcing steel.

Exhaust-only Ventilation:

With exhaust-only ventilation, exhaust fan pull stale air out of the vault while drawing fresh air in. RMS will perform ventilation calculations and prepare drawings for air change in the vault. It is our understanding that the intake will be in the parkway area and piping through the walkway tunnel will bring in the air into the vault. The vault will be under negative pressure, created by the exhaust fan; it will draw outdoor air from an intake located in the parkway. An exhaust fan will exhaust the air out to the parkway area, through the pipe in the tunnel.

Electrical:

Our electrical scope of work will be limited to supplying power to the ventilation system and lighting.

Documents:

RMS will prepare our drawings in AutoCAD 2002 and our specifications will consist of some notes on the drawings and some in MS Word in the Technical Specifications Section.

Mechanical:

RMS will design the piping system at the meter vault. RMS will review the existing proposed alternative layouts prepared by the City and together, with the City staff's input, RMS will finalize the layout and design.

Exclusions:

RMS fee does not included inspection services during construction, however, we can negotiate a fee for this task.

RMS fee does not include traffic control.

RMS fee does not include preparation of front-end specifications.

RMS fee does not include design of controls, ACADA system or preparation of PLC drawings.

EXHIBIT B

COMPENSATION SCHEDULE

RMS Engineering and Design
Tel: (949) 721-0470
Fax: (949) 721-0920

FEE ESTIMATE
City of Torrance
T-1 Vault
Modifications

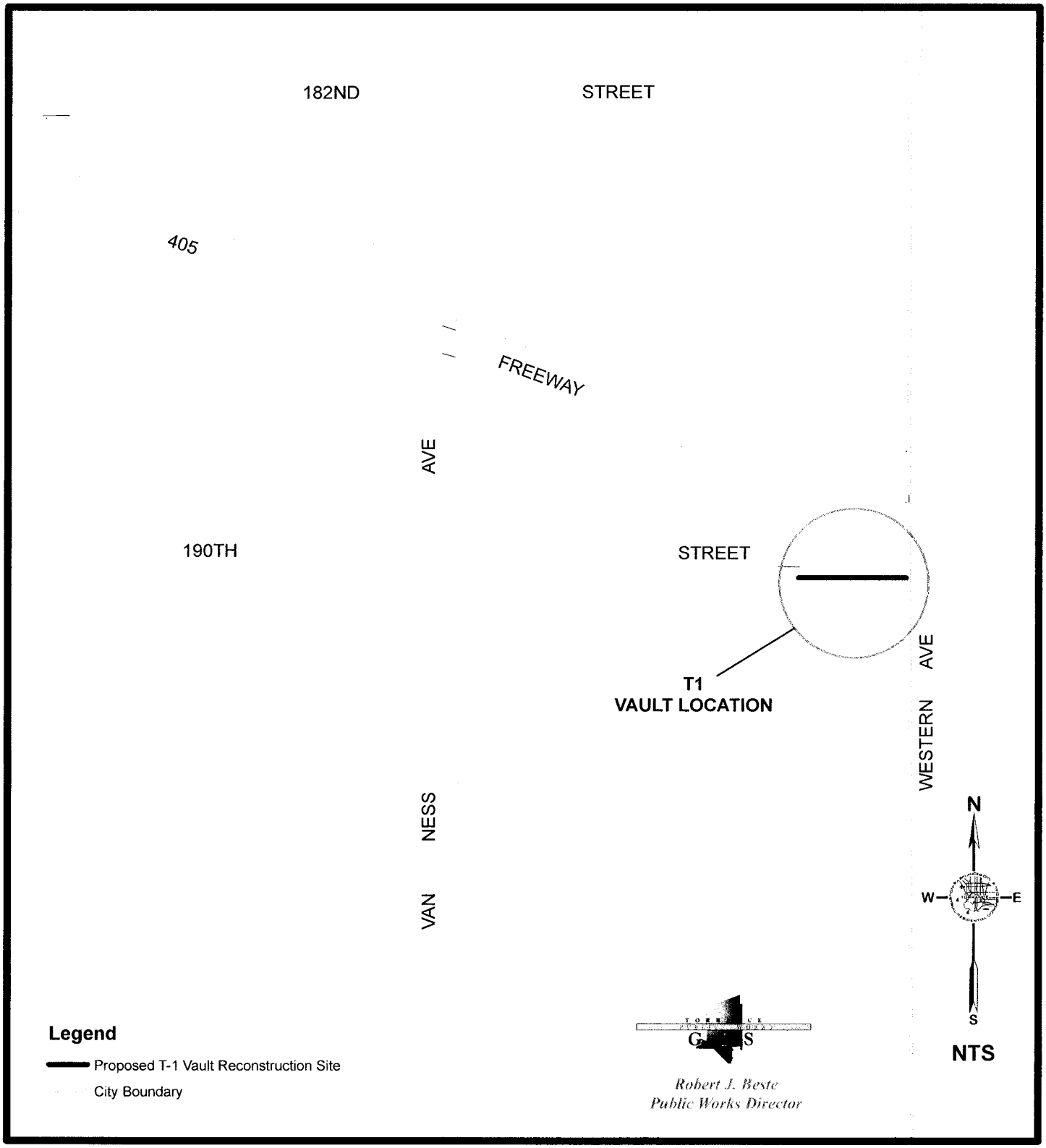
DESIGN AND
CONST SUPPORT

EXHIBIT "B"

Drawing	Sheet	Hours per Sheet			Total Hours			
Title	Number				Principal	Sr. Eng.	Sr. CAD	Total hrs
Site Visit Kick-off Meeting					4	8		12
Review Existing Drawings & Available Data						16		16
								0
Site Visits						12		12
Structural Design					2	48	72	122
Pipe Support, Valve Support, etc.					2	14	28	44
Demolition Drawings					2	16	28	46
Cost Estimate Struct Mech Elec Ventilation					4	32		36
Specifications Mech Struct Ventilation					4	16		20
Mechanical: Ventilation					2	12	22	36
Specs: in MS Word								0
Drawings: in AutoCAD								0
Mechanical: Piping Drawings/Mech					4	24	60	88
Electrical:					3	10	36	49
								0
								0
								0
Two Design Review Meetings						24		24
								0
								0
								0
Totals					27	232	246	505
RATE					**$185**	**$125**	**$85**	
FEE					**$4,995**	**$29,000**	**$20,910**	**$54,905**
DIRECT COSTS, Mileage, Plotting, etc.								**$1,600**
TOTAL FEE FOR DESIGN & CAD:								**$56,505**

Attachment "B"

VICINITY MAP
T-1 VAULT UPGRADE



X:\ENG\Lreis\PROJECTS 2007\NORTH TORRANCE I-74\T-1 Location map