

Council Meeting of
April 22, 2008

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

Members of the Council:

SUBJECT: Finance – Approve first extension of the Utility Billing (Sewer) Service Agreement. Expenditure: Approximately \$39,000 annually.

RECOMMENDATION

Recommendation of the Finance Director that Your Honorable body approve the first (of two) two-year renewal options (indexed to CPI) with the California Water Service Company (CWSC), to provide utility billing services to the City of Torrance.

Funding

Funding is available in the Finance Department's operating budget.

BACKGROUND

On December 20, 2005 Your Honorable Body authorized staff to enter into an agreement for a term of three years, with two additional two-year renewal options, with CWSC to provide utility billing services. The original agreement of three years expires on June 30, 2008. The agreement has two two-year options, and staff is recommending that the first two-year option be approved by Your Honorable Body.

On June 28, 1988, City Council passed a resolution authorizing the implementation of a sewer fee based on water consumption to be assessed to all residents of the City of Torrance. In 1988, there were three agencies providing water billing service to the City of Torrance: (1) City of Torrance, (2) Dominguez Water Corporation, and (3) California Water Company. The sewer fee was based on consumption.

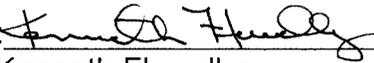
Because the fee was based on consumption, consumption data from the other two water agencies had to be obtained so that the billing could be processed. Due to confidentiality concerns and other data retrieval problems, it was concluded that the best way to assess the sewer fee to residents that were not served by the City of Torrance would be to have the other two agencies perform the billing on behalf of the City. An informal billing arrangement was made, but neither company had a formal contract with the City.

In May 2000, CWSC acquired Dominguez Water Corporation, and, in 2004, approached the City requesting a new agreement be made for the billing and collection services in the CWSC area. CWSC informed the City that their cost of providing the billing service had increased, so City staff met with CWSC to negotiate new terms which would compensate CWSC for their rising costs at a reasonable rate. The current contract (C2005-249) is the result of those negotiations.

Historically, CWSC collects approximately \$900,000 annually in sewer fee revenues for the City. CWSC has consistently provided a high level of service to the citizens of Torrance for over 20 years. Therefore, staff is recommending that Your Honorable Body approve the first two-year option with CWSC to continue providing utility billing services to the City of Torrance.

Respectfully submitted,

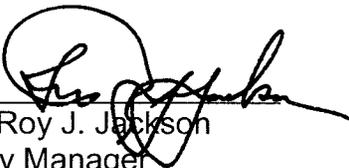
Eric Tsao
Finance Director

By: 
Kenneth Flewellyn
Assistant Finance Director

CONCUR:



Eric Tsao
Finance Director


LeRoy J. Jackson
City Manager

Attachments: (A) Amendment to the Contract
(B) Contract C2005-249

NOTICE OF ACCEPTANCE OF RIGHT TO EXTEND AGREEMENT

This NOTICE OF ACCEPTANCE OF RIGHT TO EXTEND AGREEMENT between CITY OF TORRANCE, a Municipal corporation ("CITY") and CALIFORNIA WATER SERVICE COMPANY, INC., a California Corporation ("COMPANY") is made with reference to the following Facts:

- A. On July 1, 2005, CITY and COMPANY entered into an agreement ("AGREEMENT") to provide sewer billing services for the CITY.
- B. The AGREEMENT was for a three-year term expiring June 30, 2008, with options to extend for two additional two-year terms.
- C. CITY is satisfied with the services provided by COMPANY and desires to exercise the first of its two options to extend.

EXERCISE OF OPTION

Pursuant to paragraph 2 of the AGREEMENT, CITY does hereby exercise the first of its two two-year options to extend the AGREEMENT. Unless further extended by CITY in accordance with paragraph 2 of the AGREEMENT, the AGREEMENT shall remain in effect until June 30, 2010.

ACCEPTANCE AND WAIVER OF ANY DEFECT

By execution of this NOTICE OF RIGHT TO EXTEND AGREEMENT Company acknowledges and accepts the CITY'S exercise of its right to extend

AGREEMENT and waives any defects in CITY'S exercise of its right to extend the AGREEMENT.

COMPANY REPRESENTATIVES

Paragraph 7 of the Agreement is amended to read in its entirety as follows:

“7. COMPANY REPRESENTATIVES

The following principals of Company are designated as being the principals and representatives of Company authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with the Agreement:

Lynne P. McGhee, Corporate Secretary
Martin A. Kropelnicki, Vice President and Chief Financial Officer”

RATIFICATION AND REAFFIRMANCE OF AGREEMENT

In all other respects, the Agreement dated July 1, 2005 between CITY and COMPANY is ratified and reaffirmed and is in full force and effect.

COMPANY'S AUTHORITY TO EXECUTE

The person(s) executing this Agreement on behalf of the COMPANY warrant that (i) the COMPANY is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the COMPANY; (iii) by so executing this

Agreement, the COMPANY 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 COMPANY is bound.

CITY OF TORRANCE,
a Municipal corporation

CALIFORNIA WATER SERVICES
COMPANY, INC,
a California corporation

Frank Scotto
Mayor

By: _____
Lynne P. McGhee
Corporate Secretary

ATTEST:

By: _____
Martin A. Kropelnicki
Vice President and Chief Financial
Officer

By: _____
Sue Herbers
City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

CONTRACT SERVICES AGREEMENT

This CONTRACT SERVICES AGREEMENT ("Agreement") is made and entered into as of JULY 1, 2005 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("City"), and CWS Utility Services, an affiliate of California Water Service Company, both California corporations. Within this Agreement, CWS Utility Services and California Water Service Company are collectively referred to as "Company."

RECITALS:

- A. City is a municipal corporation that provides water and sewer services to residential, commercial, and industrial users within the City. It also provides residential refuse services.
- B. Company provides utility billing services for the City of Torrance sewer customers located in the City of Torrance on California Water Service Company water lines.

AGREEMENT:

1. RESPONSIBILITIES OF THE COMPANY

A. The Company Facilities.

Company will provide the services listed in 1.B below. Company warrants that all work and services set forth in section 1.B herewith will be performed in a competent, professional and satisfactory manner.

B. Customer Billing.

- (1) Company agrees to bill monthly sewer charges on its regular monthly bills to customers designated by the City. Company will use its water consumption data to calculate monthly sewer charges as directed by the City. Company will use all reasonable efforts to collect all such charges on behalf of the City. Uncollectible charges will be turned over on a current basis to the City for further action in the same manner as uncollected utility users' taxes are presently handled.
- (2) Company shall remit to the City all moneys collected by it for sewer charges by the 20th of each month following billing. The remittance of moneys collected shall be offset by the Company's monthly service charge as set forth in compensation of this Agreement.

C2005-249

COPY

- (3) Within thirty (30) days after the monthly billings are made, Company will supply to the City a summary of monthly sewer charges by user class.
- (4) City shall have sole discretion and authority to establish and maintain rate schedules. Company shall make all reasonable efforts to implement written requests by the City for any changes or adjustment in rates.
- (5) Company will provide monthly turn on & turn off reports. All other report request may be provided at no cost unless additional computer programming is required then the reports will be made available at a cost mutually agreed upon.
- (6) It is specifically recognized and intended by the parties hereto that in performing its obligations under this Agreement, a non-utility service is being furnished by Company.
- (7) If City disputes or questions any portion of any bill, invoice or statement submitted to it by Company or any amount purportedly owing by it to Company, City shall promptly notify Company of the amount thereof so disputed or questioned, which amount City shall not be obligated to pay until such dispute or questions shall be finally resolved. If City and Company cannot resolve the disputed bill in 90 days from the date City notifies Company of the disputed bill, then the dispute can be submitted to arbitration at the option of either party. However, City agrees in each such instance to pay Company, when due, the portion of such bill, statement or amount not so disputed or questioned.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force for three years from the Effective Date. In addition, City will have the sole option, to extend the Agreement for two additional two-year terms. City must give the Company notice of its intention to exercise its options to extend the term not less than 90 days prior to the expiration date.

3. COMPENSATION

A. The Company's Fee.

Commencing on July 1, 2005, City will pay thirty-three (33) cents per account billed which will be deducted from the revenue submitted each month during the first fiscal year ending June 30, 2006. The charge will be increased to the

nearest 1/4 cent per account (calculated at the Company Carriers Route Sorting Rate) for rate increases of the United States Postal Service.

B. Inflation Factor.

The inflation adjustment will be based on the Consumer Price Index ("CPI"), all items for Urban Wage Earners and Clerical Workers for the Los Angeles, Anaheim, Riverside, published by the United States Bureau of Labor Statistics, Department of Labor 1982-84=100. Commencing July 1, 2006, the Monthly Fee will be adjusted in a percentage amount equal to the change in the CPI between the index published in May 2005 and the index published in May 2006. The adjusted amount will be rounded to the nearest cent. The Monthly Fee will be adjusted every July per May CPI-W and not to exceed 5%.

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. CITY shall provide Company 10 calendar days advance written notice of termination.
2. Upon receipt of written notice from CITY of such termination for CITY's convenience, Company 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, Company 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 by Company for Convenience.

1. Company may, at any time, terminate the Agreement for Company's convenience and without cause. Company shall provide CITY 90 days advance written notice of termination.

2. In case of such termination for Company's convenience, Company will be entitled to receive payment for work executed until the date of termination.

C. 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. Termination for cause will not affect or terminate any of the rights of the CITY as against Company 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.

D. Termination for Breach of Law.

In the event Company 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 corporate responsibility; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 13 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect Company's responsibility, 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 Company has been given notice and an opportunity to present evidence in mitigation.

E. **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 acceptable 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. **CITY REPRESENTATIVE**

Mr. Kenneth Flewellyn, Assistant Finance 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 Company.

7. **COMPANY REPRESENTATIVE(S)**

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

Richard D. Nye, VP, CFO & Treasurer
Paul G. Ekstrom, VP, Customer Service & Corp. Sec

8. **BUSINESS LICENSE**

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

9. **COMPANY'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS**

Records of pertaining to the Agreement and records of accounts between CITY and Company will be kept on a generally recognized accounting basis. All records will be available to CITY during normal working hours. Company will maintain these records for three years after final payment.

10. **INDEMNIFICATION**

Company shall save, hold harmless and indemnify the City, its officers, directors, agents, and employees from all claims, demands, damages, judgments, costs of expenses in law or equity that may at any time arise from or relate to any work performed by the Company, its agent or employees under the terms of this Agreement. City shall save, hold harmless, and indemnify Company, its officer, directors and employees from all claims, demands, damages, judgments, costs

of expenses in law or equity that may at any time arise from or relate to any work performed by the City, its agent, employees under the terms of this Agreement.

11. INSURANCE

- A. Company 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, \$500,000 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 Company/vendors, personal injury and contractual obligations with combined single limits of coverage of at least \$1,000,000 per occurrence.
 3. Workers' Compensation with limits as required by the State of California and Employer's Liability with limits of at least \$1,000,000.
- B. The insurance provided by Company 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. Company must provide certificates of insurance and/or endorsements indicating appropriate coverage, 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.

12. SUFFICIENCY OF INSURERS

Insurance 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. Company 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 Company 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.

13. CONFLICT OF INTEREST

- 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.

14. 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:

Company	CWS Utility Services A California Corporation 2632 237 th Street Torrance, CA 90505-5272 Fax: 310-325-4605
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CITY:	City Clerk City of Torrance 3031 Torrance Boulevard Torrance, CA 90509-2970 Fax: (310) 618-2931
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- 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.

15. 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 the CITY or Company without the prior written consent of the other.

16. INTEGRATION; AMENDMENT

This Agreement represents the entire understanding of the CITY and Company 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.

17. **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.

18. **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.

19. **TIME OF ESSENCE**

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

20. **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.

21. **COMPLIANCE WITH STATUTES AND REGULATIONS**

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

22. **WAIVER OF BREACH**

No delay or omission in the exercise of any right or remedy by a non-defaulting 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.

23. **ATTORNEY'S FEES**

Except as set forth in Paragraph 10, 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.

24. COMPANY'S AUTHORITY TO EXECUTE

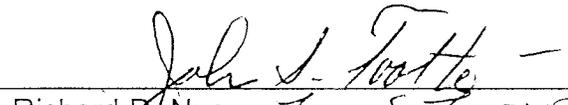
The person(s) executing this Agreement on behalf of Company warrant that (i) Company is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the Company; (iii) by so executing this Agreement, Company is formally bound to the provisions of this Agreement; and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

CITY OF TORRANCE
a Municipal Corporation

CWS UTILITY SERVICES
a California Corporation

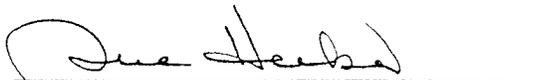


Dan Walker, Mayor



~~Richard B. Nye~~ *John S. Fottle*
VP, CFO & Treasurer

ATTEST:



Sue Herbers
City Clerk



Dan L Stockton 1-4-06
~~Paul G. Ekstrom~~ DAN L STOCKTON
VP, Customer Service & Corp. Sec.

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

By: 