

**MEETING DATE:** 11/26/07

**AGENDA ITEM:** Authorization to amend the Contract with James Thernes and Associates, Inc. for Professional Consulting Services to assist in preparation of the City's appeal with the Federal Emergency Management Agency, (FEMA) and the California Governor's Office of Emergency Services ("OES") for funding of Cranks/Tellefson slope repair.

### ATTACHMENTS

|   |                                           | <u>Pages</u> |
|---|-------------------------------------------|--------------|
| 1 | Thernes & Associates proposal             | 1-7          |
| 2 | Letter from FEMA dated September 21, 2007 | 8-14         |

# **FEE PROPOSAL**

**For**

**James Thernes & Associates, Inc.**

202 East Mill Road

Fort Ransom, ND 58033

(701) 973-2290

(701) 973-2236 Fax

[jthernes@earthlink.net](mailto:jthernes@earthlink.net)

Contact Person: James Thernes



**To Provide**

**FEMA TIME EXTENSION AND ADDITIONAL  
FUNDING REQUEST ADVISORY SERVICES**

**To The**

**City of Culver City**

**I. SCOPE OF SERVICES:**

**James Thernes & Associates, Inc. ("JT&A")** proposes to provide time extension preparation and additional funding advisory services to the **City of Culver City ("City")**.

**1. General Duties:**

JT&A proposes to provide assistance to the City of Culver City in obtaining a time extension and additional federal and state disaster assistance funding eligible through the State and Federal Public Assistance Programs as a result of the DR-1577-CA disaster, ("2005 Winter Storms"). The assistance will be given in two distinct phases.

**Phase 1:** Working with City staff, we will assist and advise the City in the preparation of a time extension request based on the requirements of the Federal Emergency Management Agency ("FEMA") and the California Governor's Office of Emergency Services ("OES").

**Phase 2:** Working with City staff, we will assist and advise the City in the preparation of an additional funding request based on the requirements FEMA and OES.

**2. Detailed Scope of Services (Phase 1 and Phase 2):**

The Phase 1 Scope of Services for this proposal outlines activities we will undertake to assist in the preparation of a time extension request along with compiling supporting backup documentation to justify the City's request.

JT&A will assist the City with the time extension request to address the additional time required to complete slope repair work associated with FEMA's Project Worksheet ("PW") 3146. The time extension will be prepared in conformance with the Federal and State Public Assistance Programs as outlined in laws, regulations, and policies as they relate to the Robert T. Stafford Act and the California Disaster Assistance Act.

Following are activities included in the **Phase 1 Scope of Services:**

- a. Assistance with preparation of a request for time extension to complete the slope stabilization repair work associated with FEMA PW 3146 and to file the time extension request with OES and FEMA.
- b. Provision of program-related advice based on City, State, and Federal Disaster Recovery Grant Program policies.
- d. Attendance at meetings as requested by the City.

Following are activities included in the **Phase 2 Scope of Services**:

- a. Assistance with preparation of a request for additional funding associated with the slope stabilization repair work, FEMA PW 3146 and the filing of the additional funding request with OES and FEMA.
- b. Assistance and advice on the development of a documentation package, tied to the expenditure records of the City, to produce an acceptable disaster grant cost summary.
- c. Assistance with the preparation and review of project worksheet versions and preparation as appropriate, of:
  - An eligibility analysis as to each PW version.
  - A Subgrantee's Statement of Nonconcurrency if the City does not agree with the eligible scope of work of a PW Version as prepared by FEMA/OES.
- d. Review of the City's compilation of reimbursable disaster repair costs and preparation of contract and financial summaries.
- e. Review of force account labor and contract expenditures for compliance with State and Federal requirements.
- f. Provision of program-related advice based on City, State, and Federal Disaster Recovery Grant Program policies.
- g. Attendance at meetings as requested by the City.

**3. Location of Work:**

The assistance included in both phases 1 and 2 shall be done at the offices of James Themes & Associates.

**4. Staff Assigned:**

James Themes shall be the principal managing the project and performing project work. Other staff may be assigned on an as-needed basis.

## II. QUALIFICATIONS/EXPERIENCE:

The staff of James Themes & Associates combined have decades of disaster response, disaster recovery, and hazard mitigation planning experience with years of engineering, architecture, and project management experience to provide a full range of disaster recovery and hazard mitigation management solutions for FEMA Public Assistance and Hazard Mitigation Program clients. We have extensive "hands on" experience working with state and local government agencies, nonprofit organizations, educational institutions and Tribal Nations during the pre-disaster, post-disaster, and the hazard mitigation planning phases of the various federal and state programs.

We also have extensive experience in the application of:

- Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended;
- Title 44 of the Code of Federal Regulations, "Emergency Management and Assistance";
- Title 38 of the Code of Federal Regulations "Federal Acquisition Regulations";
- OMB Circular A-87, "Cost Principles for State and Local Governments";
- OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments";
- OMB Circular A-128, "Audits of State and Local Governments";
- Government Code Chapter 7.5 of Division 1 of Title 2, Sections 8680 through 8692, California Disaster Assistance Act, as amended; and
- Title 19, California Code of Regulations, Chapter 6, Disaster Assistance Act.

We are familiar with these documents, information sources, and we are active participants in professional and industry groups dealing with federal regulations and cost accounting issues.

## III. FEE BASIS:

The herein-referenced services will be provided on a time-and-materials basis as incurred and shall not exceed a cap of **\$ 6,000.00 for Phase 1 and \$10,000 for Phase 2.** The fees are based on hourly rates and shall be in accordance with the Rate Schedule for Professional Services at the end of this proposal.

1. Any additional services beyond the Detailed Scope of Services in this proposal, including any additional work caused by a negative FEMA/OES time extension and/or additional funding determination, shall be authorized in writing by the City and billed in accordance with the attached Rate Schedule.

2. Special notice is made that adjustments to the Rate Schedule are annual on the 1st day of January.
3. JT&A shall invoice the City for fees and expenses incurred on a monthly basis. JT&A shall provide said invoice on or about the 5<sup>th</sup> day of each month. The City agrees to pay invoiced fees and expenses within thirty (30) days of receipt of said invoice.
4. JT&A invoices shall clearly show the name(s) of the person(s) performing the services, the dates worked and the number of hours and the rate(s) per hour, along with charges for expenses as indicated in the attached Rate Schedule.
5. All documentation, information, data, reports, and records that exist, are available, easily retrievable, and necessary for carrying out the work shall be furnished to JT&A without charge by the City, and the City shall cooperate with JT&A in the collection of the documentation requested.
6. JT&A will assume all background and statistical information provided to JT&A by the City's employees or representatives is accurate and complete. Any subsequent disallowance of funds to be paid to the City under Federal and State Public Assistance Grant Programs for any reason is the sole responsibility of the City. JT&A assumes no liability for any denial or loss of funds as a result of a negative determination associated with the development of an appeal or preparation of background and statistical documentation associated with the appeal.
7. While efforts have been made to provide accurate estimates to complete the activities herein, extraordinary situations or circumstances may arise that are outside of JT&A's control, which could lead to an increase in the total actual compensation required to complete said activities. Therefore, JT&A does not guarantee said activities herein will be completed at the specified estimate, but assures the City that every effort will be made to complete the work at or below the estimated cap. Prior written approval from the City shall be required for any services that exceed the cap of **\$6,000 for Phase 1 and \$ 10,000.00 for Phase 2.**

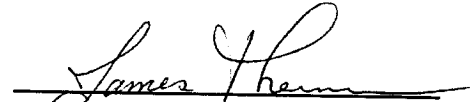
Fee Proposal  
Time Extension & Additional Funding Request Preparation Services  
City of Culver City  
October 10, 2007

IV. **PROPOSAL GENERAL INFORMATION & SIGNATURE:**

A. **General:**

Acceptance of this proposal shall be valid through October 2007.

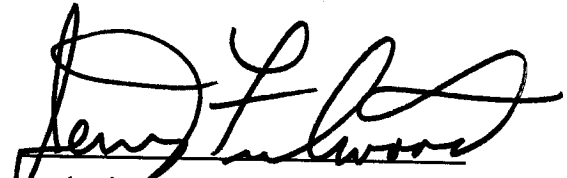
B. **Signature:**



James Themes, President  
James Themes & Associates, Inc.

Date October 10, 2007

C. **Accepted and Agreed to:**



Authorized Representative  
City of Culver City

10/23/07 City Manager

Title

Date 10/23/07

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Fee Proposal  
Time Extension & Additional Funding Request Preparation Services  
City of Culver City  
October 10, 2007

## **RATE SCHEDULE FOR PROFESSIONAL SERVICES**

Effective January 1, 2007

This schedule of charges is for professional services provided on a time-and-materials basis. If services are provided on a fixed-fee basis, the client agrees to pay the fixed fee as scheduled in the proposal/contract.

The following personnel charges are for work directly related to the projects. Rates include all overhead and profit.

| <u>Classification</u>                         | <u>Hourly Rates</u> |
|-----------------------------------------------|---------------------|
| Principal                                     | \$150.00 / Hour     |
| Project Manager/Senior Consultant             | \$140.00 / Hour     |
| Project Engineer/Architect/Accountant         | \$125.00 / Hour     |
| Consultant/Technical Manager                  | \$115.00 / Hour     |
| Recovery/Hazard Mitigation Program Specialist | \$105.00 / Hour     |
| Financial Analyst                             | \$ 85.00 / Hour     |
| Technical/Clerical Staff                      | \$ 55.00 / Hour     |

Note:

Direct expenses that are directly attributable to the performance of the work, such as travel, subsistence, long-distance communications, reproduction charges, outside services, photo supplies, equipment rentals, and messenger services **will be charged at actual cost.**

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U.S. Department of Homeland Security  
1111 Broadway, Suite 1200  
Oakland, CA 94607-4052

**FEMA**

**SEP 21 2007**

Mr. Paul Jacks  
Governor's Authorized Representative  
Governor's Office of Emergency Services  
Response and Recovery Division  
3650 Schriever Avenue  
Mather, CA 95655

Reference: First Appeal – Project Worksheets 3035 and 3146  
FEMA-1577-DR-CA, P.A.ID: 037-17568-00  
Subgrantee: City of Culver City  
OES Log: 139914; FEMA Log: 301210.3

Dear Mr. Jacks:

This is in response to your June 22, 2007, letter forwarding the first appeal from the City of Culver City (Subgrantee) of the denial of its time extension request for completing the projects approved under Project Worksheets (PW) 3035 and 3146. On May 3, 2007, the Subgrantee appealed a decision by the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) to deny its time extension requests because FEMA determined that the emergency protective measures proposed were no longer eligible, as an immediate threat no longer existed at the site.

In its appeal, the Subgrantee contends that the immediate threat remains at the site and the emergency protective measures approved under the PWs are necessary to eliminate the threat. In addition, the Subgrantee asserts the delays in completing the project have been a result of extenuating circumstances and unusual project requirements beyond its control. The Subgrantee is requesting a time extension to May 14, 2007, for PW 3035, and to October 16, 2007, for PW 3146.

As described in the attached analysis, the Subgrantee has demonstrated that an immediate threat exists at the site. Therefore, the scopes of work approved under PWs 3035 and 3146 are eligible for Public Assistance funding. Further, the Subgrantee has demonstrated that the delays in the completion of the work have been caused by extenuating circumstances. A time extension for PW 3146 is granted to October 31, 2007, for the design and construction of the project. The scope of work approved under PW 3035, geotechnical engineering, was completed in December 2005. Therefore, no time extension is required for this project. The appeal is granted.

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*Mr. Paul Jacks*

*First Appeal – PWs 3035 and 3146*

*FEMA-1577-DR-CA, P.A.ID: 037-17568-00*

*Page 2 of 2*

If you have any questions regarding this matter, please contact Robert Fenton, Director of our Response and Recovery Division, at (510) 627-7250.

Sincerely,



Karen E. Armes  
Deputy Regional Administrator  
FEMA Region IX

Enclosure

cc: Mr. Charles Herbertson  
Public Works Director  
City of Culver City  
9770 Culver Boulevard  
Culver City, CA 90232

**First Appeal Analysis  
Log 301210.3  
City of Culver City  
FEMA-1577-DR-CA  
P.A. ID 037-17568-00  
PWs 3035 and 3146**

**Background:**

The storms and heavy rains of December 27, 2004, through January 11, 2005 (FEMA-1577-DR-CA), caused a 30-foot-long by 80-foot-wide by 15-foot-deep slope failure in a hillside sloping downward from private residences on Cranks Road to private residences on Tellefson Road. As a result of the failure, the City of Culver City (Subgrantee) "red-tagged" five private homes and closed a portion of Tellefson Road. The Subgrantee requested Public Assistance reimbursement from the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) for the stabilization of the hillside to reduce the immediate threat to lives and property.

Prior to the event, the Subgrantee constructed a tiered soldier pile wall system on the slope, consisting of three soldier pile walls, to address slope stability issues that have existed over time. As a result of the failure caused by the declared event, the Subgrantee proposed the construction of three new walls to eliminate the immediate threat:

- Wall 1 – a 190-foot extension of the existing uppermost wall
- Wall 2 – a 120-foot extension of the existing wall halfway up the slope
- Wall 3 – reconstruction of the lowermost wall, which may be damaged during the construction of Walls 1 and 2

These walls were to extend across the slide area and beyond, into a portion of the slope that did not fail as the result of the declared event.

Members of FEMA's Landslide Task Force conducted a site visit on April 18, 2005. As the result of the site visit and a review of a report dated March 29, 2005, prepared by the Subgrantee's geotechnical consultant, the Landslide Task Force determined that an immediate threat did exist to two residences (10747 and 10751 Cranks Road). The site assessment prepared by the Landslide Task Force states that while a total of five homes were "red-tagged," only two residences were threatened as the result of the declared event. The remaining unsafe conditions leading to the "red-tagging" of the additional residences existed prior to the declared event. The Landslide Task Force concluded the construction of the Subgrantee's proposed Wall 1 would eliminate the immediate threat at the site that was caused by the declared event; however, only a 110-foot extension would be required to eliminate the threat.

FEMA obligated Project Worksheet (PW) 3035 on August 10, 2005, for \$82,150 to fund a geotechnical engineering study. The intent was for the Subgrantee to use the results of the study to prepare a "request for bids" for the design and construction of the wall.

Based on the recommendations provided by the Landslide Task Force and by the Subgrantee's consultants, FEMA ultimately determined that the extension of both Walls 1 and 2 was eligible for funding as emergency work. However, FEMA determined that only a 110-foot extension of Wall 1 and a 60-foot extension of Wall 2 were required to eliminate the immediate threat. FEMA obligated PW 3146 on January 12, 2006, for \$885,413 for the design and the construction of the extension of Wall 1 (110-foot-long tie-back soldier beam wall) and the extension of Wall 2 (60-foot-long cantilevered soldier beam wall). FEMA developed the cost estimate by prorating the Subgrantee's estimate for the construction of the longer walls (Wall 1: 190 feet and Wall 2: 160 feet). In response to a request by the Subgrantee, FEMA approved a time extension to August 4, 2006, for PWs 3035 and 3146.

On June 22, 2006, the Subgrantee requested an additional time extension to September 30, 2006, for PW 3035 and to October 16, 2007, for PW 3146. On August 6, 2006, the Subgrantee provided additional information in support of its request. The Subgrantee stated that although significant progress had been made on the project, the design process had been delayed due to a number of lawsuits filed by homeowners against each other and against the Subgrantee. The lawsuits created difficulties in obtaining access to the private property, necessary for surveying and obtaining samples for geotechnical analysis. Further, the Subgrantee's consultant advised that the construction should be delayed until May 15, 2007, after the end of the 2006/2007 rainy season.

FEMA denied the Subgrantee's request by letter dated January 30, 2007, because the site has remained stable over a 20-month period of time. FEMA stated that any additional work at the site would be considered permanent repair of private property, which is not eligible for funding.

The Subgrantee appealed FEMA's decision to the California Governor's Office of Emergency Services (OES) on May 3, 2007. In the appeal, the Subgrantee states that FEMA's denial because it now considers the emergency protective measures as permanent work is unreasonable and not supported by regulation. While FEMA states in its denial that the site has been stable for the last 20 months, the Subgrantee contends the site remains unstable and that the immediate threat remains. Further, the Subgrantee asserts the delays in completing the project have been a result of extenuating circumstances and unusual project requirements beyond its control. The Subgrantee is now requesting a time extension to May 14, 2007, for PW 3035 and to October 16, 2007, for PW 3146.

OES forwarded the Subgrantee's appeal to FEMA on June 22, 2007, concurring with the Subgrantee's position. OES recommends that FEMA grant the appeal and approve the time extensions as requested.

## **Analysis:**

### *Eligibility of Slope Stabilization as Emergency Work*

In its appeal, the Subgrantee takes issue with FEMA's determination that the work to stabilize the slope is now considered as permanent work. The Subgrantee contends that an immediate threat remains at the site; therefore, the elimination of that threat is eligible for funding.

In accordance with Title 44 Code of Federal Regulations (44 CFR) § 206.225 (a)(3), to be eligible, emergency protective measure must eliminate or lessen immediate threats to life, public health, or safety, or additional damage to improved property through measures that are cost effective. FEMA's Public Assistance Guide (FEMA 322, page 50) states that for a landslide "an immediate threat may exist if the earth on a slope could slide as the result of a moderate amount of rainfall."

At the time of the initial site inspections following the declared event, the immediate threat at the site was not disputed. Both FEMA's Landslide Task Force and the Subgrantee's geotechnical consultant concurred that an immediate threat existed to the affected residences. However, FEMA determined that because the site has remained stable since the initial failure, an immediate threat no longer exists.

To dispute FEMA's position regarding the threat, the Subgrantee provides a letter from its geotechnical consultant dated April 12, 2007. Based on a site visit that its consultant conducted on April 5, 2007, the consultant states that some minor movement has occurred since its last site visits in 2005; however, the movement has been minimal. The letter states that this minor movement is related to the lack of rainfall between December 2005 and April 2007 (more than 15 inches below normal). The rainfall measurement in a nearby gauge was 2.32 inches. The normal amount of rainfall at that point of the rainy season is 17.79 inches. "In average or above average precipitation years, groundwater levels would be significantly higher increasing the likelihood of future failures and slope movement." The consultant concludes that the risk to the residences and surrounding infrastructure remains as it was in late 2005.

Based on the Subgrantee's geotechnical consultant's observations, it is clear that an immediate threat does still exist at the site. Accordingly, the scope of work approved in PW 3146 is eligible as emergency work. It should be noted that FEMA determined that only a portion of the proposed retaining walls (110 feet for Wall 1 and 60 feet for Wall 2) is necessary to reduce the immediate threat.

### *Time Extension*

The Subgrantee contends that delays in completing the project have been a result of extenuating circumstances and unusual project requirements beyond its control. In its denial, FEMA did not respond to the Subgrantee's justification for a time extension, due to its determination that the proposed scope of work was no longer eligible.

As set forth in 44 CFR § 206.204 (c)(2)(ii), based on extenuating circumstances or unusual project requirements beyond the control of the Subgrantee, the Grantee may extend the project completion for an additional 6 months for emergency work. In accordance with 44 CFR § 206.204 (d), requests for time extensions beyond the Grantee's authority should be submitted by the Grantee to FEMA.

In its appeal, the Subgrantee provides a detailed time line of events, which supports its contention that despite numerous obstacles, it has continued to move forward with the project. The "extenuating circumstances and unusual project requirements" are summarized below:

- Complex litigation occurred between the Subgrantee and the property owners from July 26, 2005, through January 8, 2007.
- Due to the litigation, access rights to the Subgrantee and its consultants were denied for a period of time, which prevented completion of geotechnical studies and surveys;
- Due to the litigation, property owners were involved in design plan approval and were not cooperative, which delayed the Subgrantee's ability to send the project out to bid for final design.
- The Subgrantee's geotechnical engineer recommended delaying construction until after the 2006/2007 rainy season.
- Redesign was required due to the discovery of a pre-existing sewer line, owned and maintained by the City of Los Angeles.
- The sewer line was horizontally drilled in 1951 and after numerous attempts its exact location could not be determined.

The Subgrantee states that the structural engineer's design plans should be completed by May 14, 2007, which would allow for awarding a construction contract by July 9, 2007. The intent is to begin construction on July 23, 2007, and complete construction by October 16, 2007. The Subgrantee has demonstrated that the project delays have been caused by both extenuating circumstances and unusual project requirements; therefore, a time extension to October 31, 2007, for PW 3146 will be granted.

PW 3035's scope of work includes a geotechnical engineering study to be used to prepare a request for proposals (RFP) for the design and construction of the wall. The geotechnical reports are dated November 1, 2005, and December 7, 2005. The scope of work approved under PW 3035 was completed by December 2005, and the Subgrantee issued its RFP for final design on April 3, 2006. Accordingly, no time extension is required for PW 3035. PW 3146 includes both the design and the construction of the wall.

**Conclusion:**

The Subgrantee's appeal is granted. A time extension for PW 3146 to October 31, 2007, is approved. The scope of work approved under PW 3035 was completed by December 2005; therefore, no time extension is required for PW 3035.