STAFF REPORT
CITY OF SOLANA BEACH

TO: Honorable Mayor and City Council Members
FROM: David Ott, City Manager
MEETING DATE: July 8, 2009
ORIGINATING DEPT: City Manager’s Department
SUBJECT: Marlowe & Company Agreement for One Year for Federal Legislative and Administrative Beach Shoreline Advocacy Issues

BACKGROUND:
On August 20, 2002, the Solana Beach City Council approved a Professional Services Agreement with Marlowe & Company (Attachment 1) to provide federal legislative and administrative advocacy services related to beach shoreline protection and enhancement issues. Council has approved extending these services annually for the past six years. The City has elected to develop a new agreement with Marlowe & Company to update the provisions into our standard Professional Services Agreement (Attachment 2). The proposed new contract would allow for the continued provision of the previous services for one year, through June 30, 2010. The contract amount remains the same as Fiscal Year 2008-2009 with a monthly fee of $4,750 for services and expenses.

DISCUSSION:
Beach enhancement and shoreline protection issues continue to be a significant and major concern for the City of Solana Beach. The U.S. Army Corps of Engineers (USACE) Shoreline Feasibility Project is moving toward design of an optimized long-term beach restoration project that maximizes shoreline protection and minimizes potential environmental effects. Progress is tied to on-going federal and state beach sand related funding cycles. In addition to the beach nourishment project, potential USACE Regional Sediment Management (RSM), Section 227 or 103 opportunities exist for development of a sand retention device near Fletcher Cove to further stabilize the shoreline. Both projects require aggressive pursuit of funding and tracking of legislative changes that the City may desire to provide input on and express strong preferences for or against. To continue these efforts, entering into a new agreement is recommended with Marlowe & Company to allow continued shoreline-related legislative and funding advocacy services on behalf of the City.

CEQA COMPLIANCE STATEMENT:
Not a project as defined by CEQA

FISCAL IMPACT:
The cost of this service remains the same ($4,750 per month) as Fiscal Year 2008-2009. This is a budgeted expenditure in the Fiscal Year 2009-2010 Budget (001-6000-6190-6530).

CITY COUNCIL ACTION:

AGENDA ITEM A.7.
WORKPLAN:
The proposed legislative and funding advocacy contract is directly linked to the Strategic Priority: "Community Character" (Land Use & Planning, Sand Replenishment & Retention Program). (FY 2009-2010 Workplan)

OPTIONS:
- Approve staff recommendation.
- Deny staff recommendation and allow current agreement to lapse.
- Provide alternative direction to staff.

DEPARTMENT RECOMMENDATION:
Staff recommends that the City Council

1. Adopt Resolution No. 2009-085 (Attachment 3) authorizing the City Manager to execute a new agreement with Marlowe & Company.

CITY MANAGER'S RECOMMENDATION:
Approve Department Recommendation.

[Signature]
David Ott, City Manager

Attachment #1 Agreement No. 400
Attachment #2 Professional Services Agreement with Marlowe & Company
Attachment #3 Resolution No. 2009-085
CITY OF SOLANA BEACH

PROFESSIONAL SERVICES AGREEMENT

PROJECT: FEDERAL LEGISLATIVE AND ADMINISTRATIVE ADVOCACY FOR BEACH SHORELINE PROTECTION AND ENHANCEMENT ISSUES

THIS AGREEMENT is made and entered into this 20th day of August, 2002 by and between the CITY OF SOLANA BEACH, a Municipal Corporation, hereinafter designated as "CITY", and MARLOWE & COMPANY hereinafter designated as "CONSULTANT."

RECITALS

The CITY requires outside assistance to provide legislative and administrative advocacy for beach enhancement and shoreline protection issues at the federal level.

CONSULTANT represents itself as possessing the necessary skills and qualifications to provide the services required by the CITY.

NOW THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the CITY and CONSULTANT agree as follows:

1. CONSULTANT OBLIGATIONS

CONSULTANT shall provide the CITY with services in accordance with Attachment A, and including the following:

a) CONSULTANT will represent the CITY’s interests in beach enhancement and shoreline protection issues and funding opportunities before legislative and administrative branches of the federal government, including but not limited to, members of Congress, congressional staff, officials and employees of the U.S. Army Corp of Engineers.

b) CONSULTANT shall provide a written monthly report regarding CONSULTANT’s activities and provide other communications, on an as need basis, to CITY representatives.

c) CONSULTANT will work with CITY designated legislative advocates in coordination of the pursuance of CITY interest regarding beach and shoreline issues. CONSULTANT shall complete for CITY’s review, submittal and file, any and all lobbyist’s employer activity reports or forms required by federal law.

d) CONSULTANT shall perform all work required to accomplish the described services in conformity with applicable requirements of law: Federal, State and local.
e) CONSULTANT shall maintain professional certifications as required in order to properly comply with all City, State, and Federal Law.

2. TERM OF AGREEMENT

The term of this AGREEMENT shall be for the period commencing on July 1, 2002 and ending June 30, 2003 provided, however, this AGREEMENT may be cancelled by either CONSULTANT or CITY at any time upon the giving of thirty (30) days notice in writing to the other party.

3. COMPENSATION

For performance of services required under this agreement, CITY shall pay CONSULTANT a fee in accordance with the following:

a) The sum of $3000 per month for services in Washington D.C. and routine office expenses.

b) Reimbursement not-to-exceed $350 per month for reasonable and necessary out of pocket expenses in the performance of the services requested by the CITY beyond normal office expenses incurred by CONSULTANT. CITY shall not reimburse CONSULTANT for out of town and/or entertaining expenses, unless CITY specifically requests such travel or expense.

c) CONSULTANT is hired to render the described services and any payments made to CONSULTANT are compensation fully for such services.

4. CRITERIA AND STANDARDS

All work shall be performed in accordance with applicable City, State and Federal standard codes and criteria. In the performance of professional services CONSULTANT shall use the degree of care and skill ordinarily exercised by consultants under similar conditions.

5. INDEPENDENT CONTRACTOR

CONSULTANT's relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically so authorized in writing by the City Manager. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
6. **WORKERS’ COMPENSATION**

Pursuant to Labor Code Section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers’ Compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of these award documents. The certification shall be in accordance with Section 7 of this Agreement.

7. **INSURANCE**

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the, his agents, representative, employees or subcontractors.

### 7.1 MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001)
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, code 1 (any auto).
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

### 7.2 MINIMUM LIMITS OF INSURANCE

CONSULTANT shall maintain limits no less than:

| 7.2(a) | General Liability: (Including operations, products and completed operations, as applicable.) | $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. |
7.2(b) Automobile Liability  $1,000,000 per accident for bodily injury and property damage
7.2(c) Employer's Liability:  $1,000,000 per accident for bodily injury or disease.

7.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City Risk Manager. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

7.4 OTHER INSURANCE PROVISIONS

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

7.4(a) The CITY, its officers, officials, employees, and volunteers are to be covered as insured's as respects: liability arising out of work operations performed by or on behalf of the CONSULTANT; or automobiles owned, leased, hired or borrowed by the CONSULTANT.

7.4(b) For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

7.4(c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

7.4(d) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
7.5  **ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless approved in writing by the City's Risk Manager.

7.6  **VERIFICATION OF COVERAGE**

CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsement should be on forms provided by the CITY or on other than the CITY's forms provided those endorsements conform to CITY requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

8.  **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE**

Professional errors and omissions insurance is excluded from this Agreement.

9.  **CONSULTANT'S INDEMNIFICATION OF CITY**

CONSULTANT shall defend, indemnify, and hold harmless the CITY and its officers, agents, and employees against all claims for damages to persons or property arising out of the negligence or intentional misconduct of the CONSULTANT or its employees, agents, subcontractors, or others, in connection with the execution of the work covered by this Agreement, except only for those claims arising from the sole negligence or sole intentional misconduct of the CITY, its officers, agents, or employees. CONSULTANT's indemnification shall include any and all costs, expenses, attorneys' fees, and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, CONSULTANT, at its own expense, shall, upon written request by the CITY, provide the defense of any such suit or action brought against the CITY, its officers, agents, or employees.

CONSULTANT's indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.
10. **ERRORS AND OMISSIONS**

In the event that the CONSULTANT's negligence, errors, or omissions in the performance of work under this Agreement has resulted in expense to CITY greater than would have resulted if there were no such negligence, errors, or omissions, CONSULTANT shall reimburse the CITY for the additional expenses incurred by the City. Nothing herein is intended to limit the CITY's rights under Sections 7, 8, or 9.

11. **NO CONFLICT OF INTEREST**

The CONSULTANT shall not be financially interested in any other CITY contract for this project. For the limited purposes of interpreting this section, the CONSULTANT shall be deemed a "City Officer or employee", and this section shall be interpreted in accordance with Government Code Section 1090. In the event that the CONSULTANT becomes financially interested in any other CITY contract for this project, that other contract shall be void. The CONSULTANT shall indemnify and hold harmless the CITY under Section 9 above, for any claims for damages resulting from the CONSULTANT's violation of this Section.

12. **OWNERSHIP OF DOCUMENTS**

All plans and specifications including details, computations and other documents, prepared or provided by the CONSULTANT under this Agreement shall be the property of the CITY. The CITY agrees to hold the CONSULTANT free and harmless from any claim arising from any use other than the purpose intended. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting its participation in this project.

13. **TERMINATION OF AGREEMENT**

If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within ten (10) days of the notice.

If the defaulting party fails to cure the default within ten days of the notice or, if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within ten (10) days of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.
If any portion of the work is terminated or abandoned by the City, then the City shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement in accordance with Compensation Section 3. The City shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

14. ASSIGNMENT AND DELEGATION

This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated or sub-contracted, without the express written consent of the City. Any attempt to assign or delegate this Agreement without express written consent of the City shall be void and of no force or effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment. Any portion of the work to be performed by sub-contractors shall be shown on CONSULTANT's proposal.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

15. ENTIRE AGREEMENT

This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

16. INTERPRETATION OF THE AGREEMENT

The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.
17. **SIGNATURES**

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement.

**CITY OF SOLANA BEACH**

[Signature]

BARRY JOHNSON  
City Manager  

DATE: 9/23/02

**MARLOWE & COMPANY**

[Signature]

HOWARD MARLOWE  

DATE: 9/14/02

**ATTEST:**

[Signature]

Laura S. Seo  
City Clerk

**APPROVED AS TO FORM:**

[Signature]

Celia A Brewer  
City Attorney

(NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.)

District of Columbia:  
Subscribed and Sworn to before me this  
5 day of September 2002  
Notary Public

MY COMMISSION EXPIRES ON 10-14-05

PSAJan2002.doc
City of Solana Beach

PROFESSIONAL SERVICES AGREEMENT
FOR FEDERAL GOVERNMENT AFFAIRS CONSULTING SERVICES

THIS professional services agreement ("AGREEMENT") is made and entered into this 1st day of July, 2009 by and between the CITY OF SOLANA BEACH, a municipal corporation ("CITY"), and MARLOWE & COMPANY, a proprietorship ("CONSULTANT") (collectively "PARTIES").

WHEREAS, The CITY desires to employ a CONSULTANT to furnish federal government affairs consulting services ("PROFESSIONAL SERVICES") to seek federal appropriations for various City projects ("PROJECT"); and

WHEREAS, The CITY has determined that CONSULTANT is qualified by experience and ability to perform the services desired by CITY, and CONSULTANT is willing to perform such services; and

WHEREAS, CONSULTANT will conduct all the work as described and detailed in this AGREEMENT to be provided to the CITY.

NOW, THEREFORE, the PARTIES hereto mutually covenant and agree with each other as follows:

1. PROFESSIONAL SERVICES.

1.1. Scope of Services. The CONSULTANT shall perform the PROFESSIONAL SERVICES as set forth in the written Scope of Services, attached as Exhibit "A" Scope of Services and Fee, at the direction of the CITY. CITY shall provide CONSULTANT access to appropriate staff and resources for the coordination and completion of the projects under this AGREEMENT.

1.2. Project Coordinator. The City Manager is hereby designated as the Project Coordinator for CITY and will monitor the progress and execution of this AGREEMENT. CONSULTANT shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this AGREEMENT for CONSULTANT. Joshua J. Gaboton is hereby designated as the Project Director for CONSULTANT.

1.3. City Modification of Scope of Services. CITY may order changes to the Scope of Services within the general scope of this AGREEMENT consisting of additions, deletions, or other revisions. If such changes cause a change in the CONSULTANT'S cost of, or time required for, completion of the Scope of Services, an equitable adjustment to CONSULTANT'S compensation and/or contract time shall be made, subject to the CITY'S approval. All such changes shall be authorized in writing, executed by CONSULTANT and CITY.
2. **DURATION OF AGREEMENT.**

2.1 **Term.** The term of this AGREEMENT shall be for a period of one (1) year beginning from the date of execution of the AGREEMENT. Time is of the essence in the performance of work under this AGREEMENT, unless otherwise specified.

2.2 **Extensions.** If marked, the CITY shall have the option to extend the AGREEMENT for four (4) additional one (1) year periods or parts thereof. Extensions shall be in the sole discretion of the City Manager and shall be based upon CONSULTANT’S satisfactory past performance, CITY needs, and appropriation of funds by the City Council. The CITY shall give written notice to CONSULTANT prior to exercising the option.

2.3 **Delay.** Any delay occasioned by causes beyond the control of CONSULTANT may merit an extension of time for the completion of the Scope of Services. When such delay occurs, CONSULTANT shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the PROFESSIONAL SERVICES when justified by the circumstances.

2.4 **City’s Right to Terminate for Default.** Should CONSULTANT be in default of any covenant or condition hereof, CITY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default.

2.5 **Termination.** After this AGREEMENT has been in effect for sixty (60) days, either party may terminate the AGREEMENT without cause upon thirty (30) days’ written notice without liability or continuing obligation other than with respect to any fees and/or expense reimbursement due to CONSULTANT through the effective date of termination.

3. **COMPENSATION.**

3.1 **Total Amount.** The total cost for all work described in the Scope of Services and Fee (Exhibit “A”) shall not exceed fifty-seven thousand dollars ($57,000.00) without prior written authorization from CITY. CONSULTANT shall bill the CITY in monthly increments of four thousand seven hundred fifty dollars ($4,750.00) for work provided and shall present a written request for such payment.

3.2 **Additional Services.** CITY may, as the need arises or in the event of an emergency, request additional services of CONSULTANT. Should such additional
services be required, CITY and CONSULTANT shall agree to the cost prior to commencement of these services.

3.3. Costs. Any costs billed to the City shall be in accordance with any terms negotiated and incorporated herein as part of Exhibit "A" Scope of Services and Fee.

4. INDEPENDENT CONTRACTOR. CONSULTANT is, for all purposes arising out of this AGREEMENT, an independent contractor. The CONSULTANT has and shall retain the right to exercise full control and supervision of all persons assisting the CONSULTANT in the performance of said services hereunder, the CITY only being concerned with the finished results of the work being performed. Neither CONSULTANT nor CONSULTANT's employees shall in any event be entitled to any benefits to which CITY employees are entitled, including, but not limited to, overtime, retirement benefits, workers' compensation benefits, injury leave or other leave benefits. CONSULTANT is solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

5. STANDARD OF PERFORMANCE. While performing the PROFESSIONAL SERVICES, CONSULTANT shall exercise the reasonable professional care and skill customarily exercised by reputable members of CONSULTANT'S profession practicing in the metropolitan Southern California Area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

6. AUDIT OF RECORDS.

6.1. At any time during normal business hours and as often as may be deemed necessary the CONSULTANT shall make available to a representative of CITY for examination all of its records with respect to all matters covered by this AGREEMENT and shall permit CITY to audit, examine and/or reproduce such records. CONSULTANT shall retain such financial and program service records for at least four (4) years after termination or final payment under this AGREEMENT.

6.2. The CONSULTANT shall include the CITY's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

7. CONFIDENTIALITY. All professional services performed by CONSULTANT, including but not limited to all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by CONSULTANT, pursuant to this AGREEMENT, are for the sole use of the CITY, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the CITY. This provision does not apply to information that (a) was publicly known, or otherwise known to CONSULTANT, at the time that it was disclosed to CONSULTANT by the CITY, (b) subsequently becomes publicly known through no
act or omission of CONSULTANT or (c) otherwise becomes known to CONSULTANT other than through disclosure by the CITY. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the CITY. The sole purpose of this section is to prevent disclosure of CITY’s confidential and proprietary information by CONSULTANT or subcontractors.

8. CONFLICTS OF INTEREST.

8.1. CONSULTANT shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code § 87103. CONSULTANT represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the CITY.

8.2. If, in performing the PROFESSIONAL SERVICES set forth in this AGREEMENT, the CONSULTANT makes, or participates in, a “governmental decision” as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the CITY that would otherwise be performed by a CITY employee holding a position specified in the department’s conflict of interest code, the CONSULTANT shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the CONSULTANT’s relevant financial interests.

8.3. ☐ If checked, the CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act. Specifically, the CONSULTANT shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the CITY’s determination that the CONSULTANT is subject to a conflict of interest code. The CONSULTANT shall also file a Form 700 (Annual Statement) on or before April 1 of each year of the agreement, disclosing any financial interests held during the previous calendar year for which the CONSULTANT was subject to a conflict of interest code.

9. DISPOSITION AND OWNERSHIP OF DOCUMENTS.

9.1. All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONSULTANT under this AGREEMENT, whether paper or electronic, shall become the property of CITY for use with respect to this PROJECT, and shall be turned over to the CITY upon completion of the PROJECT or any phase thereof, as contemplated by this AGREEMENT.
9.2. Contemporaneously with the transfer of documents, the CONSULTANT hereby assigns to the CITY and CONSULTANT thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this agreement, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

10. INSURANCE

10.1. CONSULTANT shall procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" unless otherwise approved in writing by the CITY's Risk Manager.

10.2. CONSULTANT's liabilities, including but not limited to CONSULTANT's indemnity obligations, under this AGREEMENT, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the CITY is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this AGREEMENT.

10.3. Types and Amounts Required. CONSULTANT shall maintain, at minimum, the following insurance coverage for the duration of this AGREEMENT:

10.3.1. Commercial General Liability (CGL). If checked the CONSULTANT shall maintain CGL Insurance written on an ISO Occurrence form or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of $1,000,000.00 per occurrence and subject to an annual aggregate of $2,000,000.00. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

10.3.2. Commercial Automobile Liability. If checked the CONSULTANT shall maintain Commercial Automobile Liability Insurance for all of the CONSULTANT's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of $1,000,000.00 per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
10.3.3. **Workers’ Compensation.** If checked the CONSULTANT shall maintain Worker’s Compensation insurance for all of the CONSULTANT’s employees who are subject to this AGREEMENT and to the extent required by applicable state or federal law, a Workers’ Compensation policy providing at minimum $1,000,000.00 employers’ liability coverage. The CONSULTANT shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.

10.3.4. **Professional Liability.** If checked the CONSULTANT shall also maintain Professional Liability (errors and omissions) coverage with a limit of $1,000,000 per claim and $2,000,000 annual aggregate. The CONSULTANT shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this AGREEMENT whichever occurs last. The CONSULTANT agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the CITY’s exposure to loss. All defense costs shall be outside the limits of the policy.

10.4. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions are the responsibility of the CONSULTANT and must be declared to and approved by the CITY. At the option of the CITY, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers, or (2) the CONSULTANT shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

10.5. **Additional Required Provisions.** The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

10.5.1. The CITY, its officers, officials, employees, and representatives shall be named as additional insureds. The CITY’s Additional Insured status must be reflected on additional insured endorsement form (20 10 1185 or 20 10 1001 and 20 37 1001) which shall be submitted to the CITY.

10.5.2. The policies are primary and non-contributory to any insurance that may be carried by the CITY, as reflected in an endorsement which shall be submitted to the CITY.

10.6. **Verification of Coverage.** CONSULTANT shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this Section 10. The endorsement should be on forms provided by the CITY or on other than the CITY’s forms provided those endorsements conform to CITY requirements. All certificates and endorsements are to be received and approved by the CITY before
work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

11. **INDEMNIFICATION.** CONSULTANT agrees to indemnify, defend, and hold harmless the CITY, and its officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this AGREEMENT. The PARTIES expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this AGREEMENT.

12. **SUBCONTRACTORS.**

12.1. The CONSULTANT's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the PROJECT is subject to prior approval by the CITY.

12.2. All contracts entered into between the CONSULTANT and its subcontractor shall also provide that each subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this PROJECT and for the duration of this AGREEMENT. The CONSULTANT shall require the subcontractor to obtain, all policies described in Section 10 in the amounts required by the CITY, which shall not be greater than the amounts required of the CONSULTANT.

12.3. In any dispute between the CONSULTANT and its subcontractor, the CITY shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CONSULTANT agrees to defend and indemnify the CITY as described in Section 11 of this Agreement should the CITY be made a party to any judicial or administrative proceeding to resolve any such dispute.

13. **NON-DISCRIMINATION.** CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, nor shall CONSULTANT discriminate against any qualified individual with a disability. CONSULTANT shall take affirmative action to assure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment
advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by CITY setting forth the provisions of this non-discrimination clause.

14. NOTICES. All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States mail, postage prepaid and properly addressed as noted below.

David Ott, City Manager
City of Solana Beach
635 S. Highway 101
Solana Beach, CA 92075

Joshua J. Gabot, Principal
Marlowe & Company
1667 K Street, NW, Suite 480
Washington DC 20006

15. ASSIGNABILITY. This AGREEMENT and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT’s duties be delegated or sub-contracted, without the express written consent of the CITY.

16. RESPONSIBILITY FOR EQUIPMENT. CITY shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONSULTANT or any of CONSULTANT’s employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONSULTANT by CITY. The acceptance or use of any such equipment by CONSULTANT, CONSULTANT’s employees, or subcontractors shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to exonerate, indemnify and hold harmless CITY from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

17. CALIFORNIA LAW; VENUE. This AGREEMENT shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this AGREEMENT shall be brought in the county of San Diego, California. CONSULTANT hereby waives any and all rights it might have pursuant to California Code of Civil Procedure § 394.

18. COMPLIANCE WITH LAWS. The CONSULTANT shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this AGREEMENT whether now in force or subsequently enacted. This includes maintaining a City of Solana Beach Business Certificate.

19. ENTIRE AGREEMENT. This AGREEMENT sets forth the entire understanding of the PARTIES with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein. No change, alteration, or modification of the terms or
conditions of this AGREEMENT, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

20. NO WAIVER. No failure of either the CITY or the CONSULTANT to insist upon the strict performance by the other of any covenant, term or condition of this AGREEMENT, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this AGREEMENT shall constitute a waiver of any such breach of such covenant, term or condition.

21. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this AGREEMENT shall not render any other provision unenforceable, invalid, or illegal.

22. DRAFTING AMBIGUITIES. The PARTIES agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this AGREEMENT, and the decision of whether or not to seek advice of counsel with respect to this AGREEMENT is a decision which is the sole responsibility of each Party. This AGREEMENT shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the AGREEMENT.

23. CONFLICTS BETWEEN TERMS. If an apparent conflict or inconsistency exists between the main body of this AGREEMENT and the Exhibits, the main body of this AGREEMENT shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this AGREEMENT, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this AGREEMENT, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this AGREEMENT.

24. EXHIBITS INCORPORATED. All Exhibits referenced in this AGREEMENT are incorporated into the AGREEMENT by this reference.

25. SIGNING AUTHORITY.

25.1. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or PARTIES hereto harmless if it is later determined that such authority does not exist.
25.2. □ If checked, a proper notary acknowledgement of execution by CONSULTANT must be attached.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the day and year first hereinabove written.

CITY of SOLANA BEACH, a municipal corporation

City Manager, David Ott

MARLOWE & COMPANY, a proprietorship

By: ____________________________

Signature

Edward Marlowe, President

ATTEST:

City Clerk, Angela Ivey

By: ____________________________

Signature

Joshua J. Gaboton, Principal

APPROVED AS TO FORM:

City Attorney, Johanna N. Canlas
EXHIBIT "A"
SCOPE OF SERVICES AND FEE

Services

Marlowe & Company will perform the following services in accordance with the terms and conditions set forth in this Agreement:

- Consultant will seek federal appropriations for the City’s Sewer System Improvement Project; the Highway 101 Revitalization Transportation Initiative; Army Corps of Engineers activities; and other public works and economic development initiatives mutually agreed to by the City and the Consultant.

The City acknowledges and agrees that Marlowe & Company does not have control over third party decision makers, and therefore Marlowe & Company makes no representations, warranties or guarantees that it can achieve any particular results. Marlowe & Company shall act in good faith in connection with its performance of the services described herein.

Fee

Expenses. The fees described in Section 3.1 of this Agreement shall include up to three (3) visits by Marlowe & Company personnel to the City’s offices. Such fees do not include, however, payment (or reimbursement) for expenses incurred by Marlowe & Company, if any, in connection with (i) visits to the City’s offices in excess of the number of visits set forth in the foregoing sentence, or (ii) out-of-town travel undertaken by Marlowe & Company personnel at the request of the City. Any reasonable and necessary costs incurred by Consultant in connection with such additional visits and/or out-of-town travel shall be paid (or reimbursed) by the City upon presentation of reasonable back-up documentation.

Accountings and Updates. Consultant shall account each month to the City for the time it has spent in performance of the services above and shall maintain contact with a designated representative of the City by telephone, fax, mail, and/or e-mail to inform said representative of developments regarding the projects involved and respond to said representative’s comments and questions in a prompt and appropriate manner.
RESOLUTION NO. 2009-085

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN MARLOWE & COMPANY AND THE CITY OF SOLANA BEACH FOR FEDERAL LEGISLATIVE AND ADMINISTRATIVE BEACH SHORELINE ADVOCACY ISSUES

WHEREAS, in August, 2002, the Solana Beach City Council approved the signing of Agreement No. 400 with Marlowe & Company; and

WHEREAS, the City desires to enter into a new agreement with Marlowe & Company to continue to perform legislative and administrative beach shoreline advocacy on issues important to the City until June 30, 2010.

NOW, THEREFORE, the City Council of the City of Solana Beach, California resolves as follows:

1. That the foregoing recitations are true and correct.

2. That the City Manager is authorized to execute a new agreement with Marlowe and Company.

PASSED AND ADOPTED this 8th day of July 2009, at a regularly scheduled meeting of the City Council of the City of Solana Beach, California by the following vote:

AYES: Councilmembers –
NOES: Councilmembers –
ABSENT: Councilmembers –
ABSTAIN: Councilmembers –

 MIKE NICHOLS, Mayor

APPROVED AS TO FORM: ATTEST:

JOHANNA N. CANLAS, City Attorney ANGELA IVEY, City Clerk