

C-53608

**PROFESSIONAL SERVICES AGREEMENT
WITH ANCHOR QEA, L.P. FOR
RGP 54 REAUTHORIZATION**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into as of this 25th day of JANUARY, 2012 ("Effective Date") by and between the CITY OF NEWPORT BEACH, a California Municipal Corporation ("City"), and ANCHOR QEA, L.P., a California limited partnership ("Consultant"), whose address is 26300 La Alameda, Suite 240, Mission Viejo, CA 92691 and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to obtain regulatory approval for RGP 54 Reauthorization ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. The principal member of Consultant for purposes of Project shall be Steve Cappellino.
- E. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2014 unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement. Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). The City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.1.1 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.2 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator (as defined in Section 6 below) not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.3 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates or Progress Payments Schedule attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Fifty-Four Thousand, Nine Hundred Ninety-Three Dollars and 00/100 (\$54,993.00)** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement, or specifically approved in writing in advance by City.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

5. PROJECT MANAGER

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Steve Cappellino to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

5.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to the City.

6. ADMINISTRATION

This Agreement will be administered by the Public Works Department. Chris Miller, Harbor Resources Manager or his designee, shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his designee shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with the highest professional standards. For purposes of this Agreement, the phrase "highest professional

standards” shall mean those standards of practice recognized by one (1) or more first-class firms performing similar work under similar circumstances.

8.2 All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement; all applicable federal, state and local laws; and the highest professional standard.

8.3 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant’s Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents and employees (collectively, the “Indemnified Parties”) from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, “Claims”), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant’s presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney’s fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Consultant is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of

any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. The City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and the City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

18. COMPUTER DELIVERABLES

All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

19. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

20. INTELLECTUAL PROPERTY INDEMNITY

The Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

21. RECORDS

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

22. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

23. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

25. CONFLICTS OF INTEREST

25.1 The Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

25.2 If subject to the Act, Consultant shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

26. NOTICES

26.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Chris Miller, Harbor Resources Manager
Public Works Department
City of Newport Beach
3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92658
Phone: (949) 644-3043
Fax: (949) 723-0589

26.2 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Steve Cappellino
ANCHOR QEA, L.P.
26300 La Alameda, Suite 240
Mission Viejo, CA 92691
Phone: (949) 347-2780
Fax: (949) 334-9646

27. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request for payment. The Consultant and the City expressly agree that in addition to any claims filing requirements set forth in the Agreement, the Consultant shall be required to file any claim the Consultant may have against the City in strict conformance with the Tort Claims Act (Government Code sections 900 *et seq.*).

28. TERMINATION

28.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

28.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

29. STANDARD PROVISIONS

29.1 Compliance with all Laws. Consultant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

29.2 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

29.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

29.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

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

29.6 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

29.7 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

29.8 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

29.9 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

29.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.


29.11 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.


**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 12/14/12

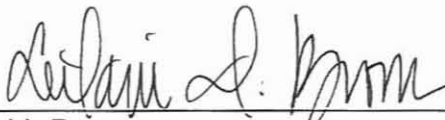
By:  (for)
Aaron C. Harp
City Attorney

**CITY OF NEWPORT BEACH,
A California municipal corporation**

Date: 1-14-13


By: 
Dave Webb
Public Works Director

ATTEST: 1-25-13
Date: _____

By: 
Leilani I. Brown
City Clerk

**CONSULTANT: ANCHOR QEA, L.P., a
California limited partnership**

Date: 12/26/12

By: 
Steve Cappellino
Senior Partner



[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates
 Exhibit C – Insurance Requirements

**EXHIBIT A
SCOPE OF SERVICES**



26300 La Alameda, Suite 240
Mission Viejo, California 92691
Phone 949.347.2780
Fax 949.334.9646

April 25, 2012

Chris Miller
City of Newport Beach
829 Harbor Island Drive
Newport Beach, California 92660

Re: Scope of Work and Cost Estimate for Obtaining Regulatory Approval for
Reauthorization of Regional General Permit 54

Dear Mr. Miller:

Anchor QEA, L.P., is pleased to submit this scope of work and cost estimate to assist the City of Newport Beach (City) with obtaining reauthorization of Regional General Permit (RGP) 54, which will facilitate small dredging projects in Newport Bay. Based on our recent conversations, we understand RGP 54 expired in October 2011 and now requires submittal of new permit applications to the regulatory agencies to initiate the reauthorization process for the permit. Anchor QEA will prepare complete permit applications for submittal to the California Coastal Commission (CCC), U.S. Army Corps of Engineers (USACE), and the Santa Ana Regional Water Quality Control Board (RWQCB).

We understand the City plans to obtain reauthorization of the maintenance dredging portion of the expired version of RGP 54 as quickly as possible and to obtain approval for a period less than 5 years to make use of existing sediment characterization data without performing additional sediment testing. To achieve this goal, our proposed scope of work and cost estimate includes staff time for frequent coordination with the regulatory agencies to facilitate expedited processing of the permit applications. These costs are integrated within the proposed costs for each of the tasks listed below and are based on our experience working with each agency.

In parallel with this permit process, we will work with the City to identify ongoing City and stakeholder maintenance needs in Newport Bay and will propose alternative approaches for RGP 54 that might better suit those needs. Our experience with other large-scale RGPs in southern California that authorize maintenance activities and our understanding of City and stakeholders needs will help us develop an approach that will provide greater utility while still complying with agency requirements.

PROPOSED SCOPE OF WORK

Task 1: Obtain Regulatory Permits/Approvals

Based on our experience with similar efforts in southern California and our understanding of the history and current status of RGP 54, a CCC Coastal Development Permit (CDP), USACE Standard Individual Permit, and RWQCB Section 401 Water Quality Certification will be required. Each subtask is described in further detail below and is based on the following assumptions:

- Reauthorization will be requested for a period less than the full 5-year maximum to be consistent with the age of the existing sediment testing data and suitability determinations from the Southern California Dredged Material Management Team (DMMT).
 - The City will request authorization only for the dredging portion of the RGP and will omit the activities related to infrastructure repair and replacement (i.e. dock work).
 - The City has determined that activities authorized under RGP 54 will be categorically exempt from the California Environmental Quality Act (CEQA) in accordance with Class 4, Guidelines Section 15304(g), and no additional CEQA action will be required.
 - The City will provide Anchor QEA with copies of applications submitted to the agencies in 2006, applicable sediment analysis reports, and applicable suitability determinations or meeting minutes from the Southern California DMMT meetings.
 - The City will provide up-to-date electronic CAD files of the areas covered under the expired RGP 54.
 - Anchor QEA will act as the City's agent to communicate directly with the regulatory agencies and will facilitate obtaining these permits and approvals.
 - Draft documents will be provided electronically to the City for a review prior to submittal to the agencies.
-

- All documents submitted to the agencies will be completed pursuant to State and Federal standards.
- Anchor QEA will pay all base permit application fees and then submit invoices to the City accordingly. All additional permit application fees will be paid directly by the City, if required.
- Anchor QEA staff will attend up to two local meetings with the regulatory agencies; costs for local travel and other direct costs (such as production of meeting handouts) are included.
- The agencies will process the permit applications without requiring new technical information including, but not limited to, habitat or sensitive resource studies or sediment characterization studies.
- The City will pay direct costs for document production and mailing for any public notification process that may be required by the agencies.

Task 1A: Coastal Development Permit

Anchor QEA will submit a Coastal Development Permit application, including appropriate supplemental information, to the CCC and will respond to requests for additional information from CCC staff. Based on our understanding of the City's prior coordination with CCC staff on this project, we have assumed that development of a draft staff report and attendance at a CCC hearing will not be required. This task does not include development of any additional submittals that might be required by the CCC as conditions for approval of the project.

Task 1B: Standard Individual Permit

Anchor QEA will submit a Standard Individual Permit application to the USACE. A public notice process and preparation of an Environmental Assessment (EA) under the National Environmental Policy Act will be included in the application process. We will prepare an application as well as a draft public notice and a draft EA for use by the USACE. Our fee includes development of supporting Endangered Species Act and Essential Fish Habitat (ESA/EFH) information as part of the application. We will also prepare a draft letter for submittal to the CCC that requests a Federal Coastal Zone Management Act consistency determination (required for ocean disposal of dredged sediment).

Task 1C: Section 401 Water Quality Certification

Anchor QEA will submit a Clean Water Act Section 401 Water Quality Certification application to the RWQCB.

SCHEDULE

Effort of this proposed scope of work will begin as soon as authorization is received from the City. Our goal is to submit all permit applications to the agencies in mid-May. To accomplish this goal, we anticipate the need to coordinate closely with the City to expedite preparation and submittal of the applications.

SUMMARY OF COSTS

At this time, we are requesting authorization to proceed with the scope of work previously described, with a not to exceed cost of \$49,993, plus an estimated \$5,000 for base permit application fees (Table 1). We will perform these tasks on a time and materials basis, according to our attached rate sheet (Attachment A). A detailed cost breakdown is provided as Attachment B. We will only bill for time and materials actually expended. If the City is amenable to this scope of work, we will perform the work pursuant to the terms of the existing contract.

Table 1
Estimated Costs

| Task | Description | Amount Requested |
|-------------|---|-------------------------|
| 1 | Obtain Regulatory Permits/Approvals | |
| 1A | Coastal Development Permit | \$16,004 |
| 1B | Standard Individual Permit | \$24,974 |
| 1C | Section 401 Water Quality Certification | \$9,015 |
| | Professional Services Total | \$49,993 |
| | Permit Fees (estimated) | \$5,000 |

**EXHIBIT B
SCHEDULE OF BILLING RATES**

Anchor QEA, L.L.C.

2012 BILLING RATES

Professional Level Hourly Rates

| | |
|---|-------|
| Principal CM ¹ /Engineer/LA ² /Planner/Scientist..... | \$215 |
| Senior Managing Analyst/CM/Engineer/LA/Planner/Scientist..... | \$195 |
| Managing Analyst/CM/Engineer/LA/Planner/Scientist..... | \$175 |
| Senior Analyst/CM/Engineer/LA/Planner/Scientist..... | \$155 |
| Staff 3 Analyst/CM/Engineer/LA/Planner/Scientist | \$140 |
| Staff 2 Analyst/CM/Engineer/LA/Planner/Scientist | \$125 |
| Staff 1 Analyst/CM/Engineer/LA/Planner/Scientist | \$105 |
| Technician | \$89 |
| Senior CAD ³ Designer | \$112 |
| CAD Designer | \$95 |
| Technical Editor | \$95 |
| Project Coordinator | \$89 |

Special Hourly Rates

| | |
|--------------------------------------|-----------------------------------|
| National expert consultant..... | \$350 |
| All work by a testifying expert..... | 1.5 times professional level rate |

EXPENSE BILLING RATES

Expense Rates

| | |
|---|--------------------------|
| Computer Modeling (per hour) | \$10.00 |
| Graphic Plots (varies with plot size) | \$3-6/sf |
| Mileage (per mile) | Current Federal Standard |

FEE ON LABOR AND EXPENSE CHARGES

| | |
|------------------------------------|-----|
| Subcontracts/subconsultants..... | 10% |
| Travel and other direct costs..... | 10% |
| Field equipment & supplies..... | 10% |

¹ CM = Construction Manager

² LA = Landscape Architect

³ CAD = Computer Aided Design

ANCHOR QEA, LLC.
 2012 PROJECT COST ESTIMATING FORM
 Proposal/Project Name:
 04/20/12

City of Newport Beach
 RGP 54 Reauthorization

Number:
 Prepared: Gale

Task 1A - California Coastal Commission
 Task 1B - US/ACE Standard Individual Permit
 Task 1C - Clean Water Act Section 401 Water Quality Certification

| Labor Categories | Billing Rate | Task 1 | Task 2 | Task 3 | | --- | --- | --- | --- | --- | --- | Total Hours | Total Dollars |
|---|---------------|------------------|------------------|-----------------|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------------|
| Principal CM/Engr/LA/Plan/Sci | \$ 215 | 8 | 10 | 4 | | 0 | 0 | 0 | 0 | 0 | 0 | 22 | \$ 4,730 |
| Sr Managing Analyst/CM/Engr/LA/Plan/Sci | \$ 195 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | \$ - |
| Managing Analyst/CM/Engr/LA/Plan/Sci | \$ 175 | 24 | 24 | 8 | | 0 | 0 | 0 | 0 | 0 | 0 | 56 | \$ 9,800 |
| Senior Analyst/CM/Engr/LA/Plan/Sci | \$ 155 | 40 | 78 | 24 | | 0 | 0 | 0 | 0 | 0 | 0 | 142 | \$ 22,010 |
| Staff 3 Analyst/CM/Engr/LA/Plan/Sci | \$ 140 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | \$ - |
| Staff 2 Analyst/CM/Engr/LA/Plan/Sci | \$ 125 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | \$ - |
| Staff 1 Analyst/CM/Engr/LA/Plan/Sci | \$ 105 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | \$ - |
| Senior CAD Designer | \$ 112 | 17 | 20 | 12 | | 0 | 0 | 0 | 0 | 0 | 0 | 49 | \$ 5,488 |
| CAD Designer | \$ 95 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | \$ - |
| Project Coordinator (PC/PA) | \$ 89 | 14 | 25 | 11 | | 0 | 0 | 0 | 0 | 0 | 0 | 50 | \$ 4,450 |
| Project Coordinator (Admin) | \$ 89 | 6 | 21 | 8 | | 0 | 0 | 0 | 0 | 0 | 0 | 35 | \$ 3,115 |
| Technician | \$ 89 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | \$ - |
| National Expert Consultant | \$ 350 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | \$ - |
| Total Hours | | 109 | 178 | 67 | | 0 | 0 | 0 | 0 | 0 | 0 | 354 | |
| Total Labor | | \$ 15,804 | \$ 24,774 | \$ 9,015 | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ 49,593 |
| Average Hourly Rate | \$ 140 | | | | | | | | | | | | |
| Subconsultants | | | | | | | | | | | | | |
| Chemical Analyses (Calscience) | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Toxicity Testing (Nautilus) | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Gahaga & Bryant Surveying | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Total Cost | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Markup on subconsultants | 5.0% | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Reimbursables | | | | | | | | | | | | | |
| CAD/Computer (\$/hr) | \$10.00 | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Mileage (\$/mile) | \$0.510 | \$ 200 | \$ 200 | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ 400 |
| Copies (\$/copy) | \$0.10 | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Anchor boat (\$/day) | \$300 | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Faxes (\$/fax) | \$1.00 | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Outside Expenses | | | | | | | | | | | | | |
| Truck Rental | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Repro/Plotting | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Mail/Fedex/Courier | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Office/Boat Slip Rental | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Field Sampling Equipment | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Miscellaneous | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Total Cost | | \$ 200 | \$ 200 | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ 400 |
| Markup on outside expenses | 5.0% | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Field Equipment and Supplies Summary | | | | | | | | | | | | | |
| | | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| Markup on field supplies | 5.0% | \$ - | \$ - | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ - |
| TOTAL COSTS | | \$ 16,004 | \$ 24,974 | \$ 9,015 | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | | \$ 49,993 |

EXHIBIT C

1. INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1.1 Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.

1.2 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

1.3 Coverage Requirements.

1.3.1 Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

1.3.1.1 Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

1.3.2 General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

1.3.3 Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

1.3.4 Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

1.4 Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

1.4.1 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.

1.4.2 Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, but not including professional liability, shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be included as insureds under such policies.

1.4.3 Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

1.4.4 Notice of Cancellation. All policies shall provide City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

1.5 Additional Agreements Between the Parties. The parties hereby agree to the following:

1.5.1 Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

1.5.2 City's Right to Revise Requirements. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant sixty (60) days advance written notice of

such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

1.5.3 Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

1.5.4 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

1.5.5 Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

1.5.6 City Remedies for Non Compliance If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.

1.5.7 Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

1.5.8 Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.