



CITY OF NEWPORT BEACH

Public Works Department Harbor Resources Division

REQUEST FOR PROPOSAL

September 22, 2010

**RE: Request for Proposal
Regional General Permit 54 Renewal**

The City of Newport Beach Harbor Resources Division is requesting proposals from qualified environmental science and engineering firms for Regional General Permit 54 renewal ("Project"). The City currently provides assistance through the RGP-54 permit to local property owners in obtaining permission to perform maintenance dredging under their individual slips. This permit will expire in October 2011, and the City desires to provide continuous assistance by avoiding any lapse in permitting authority.

Background

- The City has proposed an approach to extend the current RGP-54 permit for small project dredging and dock repair projects. The approach is outlined in the attached August 18, 2010 letter to the DMMT.
- The approach was presented to the multiagency DMMT and was conceptually approved. A formal proposal will still need to be submitted to the DMMT.
- A key point of this approach is the proposal to extend the existing permit for 2.5 years until a comprehensive dredging of the federal channels is completed. Thereafter, the City proposes to complete a comprehensive baseline evaluation of the RGP areas under a significantly changed condition.
- The permit extension is proposed to be completed with minimal sediment characterization except where changes are found as noted in the August 18 letter.

Request for Proposal

The City is in need of consultant services to perform existing data and conditions evaluations, chemical analyses, and bioassay/bioaccumulation analyses where necessary according to the August 18 proposal. The consultant shall submit a proposal that includes:

- A list of similar projects with which your firm has experience.
- A statement of your understanding of the scope of work.
- An outline of your proposed strategy and an estimated completion date.
- Demonstration that the schedule noted in the August 18 City letter is attainable by consultant.
- A list of personnel including the proposed project manager who will be assigned to this project.

- Preparation of a Sampling and Analysis Plan (SAP) in accordance with the August 18 City strategy.
- Negotiation of the SAP details with the regulatory agencies.
- Demonstration of capabilities to perform necessary sampling, analysis and evaluation.
- A Fee Schedule which includes hourly rates, unit costs for sampling, analysis and evaluation, and incidentals (e.g. copying, mileage etc...) A maximum not-to-exceed fee should also be specified.
- Preparation of a final report.
- Assistance by attending meetings with regulatory agencies, hearings and providing verbal and written input as needed.

General Information

City's Reservation of Rights: The City may evaluate the proposals based on the anticipated completion of all or any portion of the Project. The City reserves the right to divide the Project into multiple parts, to reject any and all proposals and re-solicit for new proposals, or reject any and all proposals and temporarily or permanently abandon the Project. City makes no representations, written or oral, that it will enter into any form of agreement with any respondent to the RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.

Acceptance of Evaluation Methodology: By submitting its proposal in response to this RFP, respondent accepts the evaluation process and acknowledges and accepts that determination of the "most qualified firm" will require subjective judgments by the City.

No Reimbursement for Costs: Respondent acknowledges and accepts that any costs incurred from the respondent's participation in this RFP process shall be at the sole risk and responsibility of the respondent.

Waiver of Claims: Each respondent, in submitting a proposal, is deemed to have waived any claims for damage by reason of the selection of another proposal and/or the rejection of its proposal.

Insurance: The firm that is selected to perform the proposed services shall be required to execute the City's standard form Professional Services Agreement (PSA) prior to commencement of any work and shall perform all services in accordance with the terms and conditions of the PSA (the standard PSA is included as Exhibit 2). By submitting its Proposal, the selected firm agrees that they have reviewed the standard agreement and will agree to execute said contract with the City without exception, unless so noted in the corresponding section of its proposal.

The selected firm shall obtain and maintain at all times, during the term of the contract, comprehensive general, automobile, professional liability, and Workers' Compensation insurances as described in the standard PSA. The selected firm shall comply with all required insurance coverage as outlined in the PSA.

The City is requesting three copies of your written proposal delivered no later than 3:00 p.m., Wednesday, October 6, 2010. The Fee Schedule and not-to-exceed costs shall be provided in a separate sealed envelope labeled "Fee Schedule and Costs."

The written proposal can be mailed or personally delivered to Harbor Resources at the following address:

City of Newport Beach
Harbor Resources Division
829 Harbor Island Drive
Newport Beach, CA 92660
Attention: Project Manager, Chris Miller

Public Works staff will review the proposal. The successful Consultant will be selected on the basis of project understanding, demonstrated adherence to the August 18 City letter, demonstration of knowledge of conditions and issues in Newport Harbor, expertise of the project team on similar projects, and capability to perform within the proposed project schedule. An interview of the project team may be required prior to selection.

After top candidates have been selected according to the above criteria, the Fee Schedule and Costs will be reviewed for final selection, and award of contract will be recommended to City Council for consideration on approximately November 9, 2010.

Should you have any questions regarding this project, please contact me at (949) 644-3043 or by email at cmiller@newportbeachca.gov.

Thank you,

Chris Miller

Harbor Resources Manager

Cc: Steve Badum, Public Works Director

Attachment: Exhibit 1: August 18, 2010 City Letter to DMMT
Exhibit 2: Standard Professional Services Agreement



CITY OF NEWPORT BEACH

CITY MANAGER'S OFFICE Harbor Resources Division

August 18, 2010

RE: RGP-54 Renewal

Dear DMMT Members:

The City of Newport Beach holds a regional general permit (RGP-54) for small dredging projects within the Pierhead Line in Lower Newport Bay. This permit allows for individual projects of up to 1,000 cubic yards (CY) and an annual limit of 20,000 CY. Based on projects conducted in 2007 through 2010, the average project volume has been 386 CY, and the annual total has been 990 to 10,903 CY. The total volume going to the ocean disposal site ranged from 0 to 990 CY, with the remainder as beach replenishment. The permit is renewed every five years and has typically required a full Tier III sediment evaluation following Ocean Testing Manual and Inland Testing Manual guidance. A full Tier III sediment evaluation includes sediment collection, chemical analysis, benthic and water-column toxicity tests, and an evaluation of bioaccumulation potential.

The RGP-54 permit is coming up for renewal in November 2011 and would require sediment evaluations in late 2010 to support this renewal. However, the City and USACE-LA recently completed an extensive sediment investigation of Lower Newport Bay in support of dredging in the Federal Channels. Many of the areas assessed during this "Federal Channels" investigation border areas included in the RGP-54 program. Furthermore, the USACE-LA will be dredging the Lower Bay in 2011 and 2012 potentially affecting sediment characteristics in the Lower Bay. The City has been discussing options that would allow it to take advantage of the data that has recently been collected as well as the current and historic knowledge regarding the distribution of contaminants in the Bay.

Based on discussions with USACE-LA, the maximum time that sediment data would be considered acceptable to characterize dredged material is five years. As such, the City would propose to use the recent dataset, where appropriate, to characterize areas for the RGP-54 renewal. Because the Federal Channels sampling was conducted in Spring 2009, the City would propose to extend the current RGP-54 for 2½ years to March 2014. Following the Channel dredging program which is anticipated to be in 2011-12, the City would propose to conduct a full Tier 3 evaluation on all RGP-54 areas for the 2014 renewal.

For the 2011 renewal, the City will review data from the 2009 sediment investigation to determine whether additional data is needed for each RGP area. Portions of the RGP near sediments found to be suitable for ocean disposal in 2009 would be considered suitable for ocean disposal for the RGP-54 extension. For those portions of the RGP area where no determination was made in 2009 and for portions of the RGP that are not near sediments characterized in 2009, the City would propose to conduct a tiered evaluation. Tier II sediment chemistry would be conducted to determine whether conditions had changed since the previous RGP investigation in 2005. For those areas where the concentrations of contaminants of potential concern (COPCs) had increased to biological effects levels, additional Tier III analysis would be conducted. Increases in

concentrations of bioaccumulable COPCs would receive bioaccumulation testing and tissue analysis. In light of the shortened renewal period, the relatively small volume of material that is dredged under this program and the extensive data that has been collected in Lower Newport Bay, the City feels that this is a reasonable approach.

Following the full Tier III characterization in 2014, the City would like to consider using the tiered evaluation process. Subsequent renewals would include a Tier I evaluation to determine what additional sampling and analysis would be needed throughout the Harbor. The Tier I evaluation would include an assessment of contaminant sources, spills in the area since the previous investigation, and historic sediment data including the trends in data collected in 2000, 2005, 2009, 2010, and 2014. Additional Tier II chemistry could also be included in such a program to determine whether contaminant distributions had changed over time.

Implementation of this modified RGP-54 strategy would include the following three steps:

- 1) *Data Evaluation and Preparation of a SAP* – Data collected in March 2009 would be summarized and used to determine the level of effort needed for the RGP-54. This would be included as a section in Sampling and Analysis Plan and would be presented with the sampling and analysis strategy for the RGP-54 renewal. The SAP would delineate which of the RGP-54 areas require further evaluation, and where samples should be collected, and what analysis would be required.
- 2) *Submittal of the SAP and Review by the DMMT* – The SAP would be submitted to the DMMT for review and approval.
- 3) *Field Sampling and Analysis* – Based on the DMMT-approved SAP, sampling and analysis would be targeted for Fall of 2010 with data being submitted to the DMMT in early 2011.

The City would like to discuss this proposed approach at the next DMMT to allow us to start the renewal process.

Sincerely,

Chris Miller
Harbor Resources Manager
(949) 644-3043

**PROFESSIONAL SERVICES AGREEMENT WITH
INSERT VENDOR NAME
FOR INSERT PROJECT NAME**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into as of this ____ day of _____, 2010, by and between the CITY OF NEWPORT BEACH, a California Municipal Corporation ("City"), and INSERT VENDOR NAME, a choose entity type ("Consultant"), whose address is Insert address 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 is insert description of overall project here.
- C. City desires to engage Consultant to insert short description of Consultant's role in overall project ("Project").
- D. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- E. The principal member[s] of Consultant for purposes of Project, shall be insert name of consultant project manager.
- F. 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 above written date, and shall terminate on [Click here to enter a date](#) unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Work" or "Services"). The City may elect to delete certain tasks of the Scope of Services at its sole discretion.

3. TIME OF PERFORMANCE

[Option A -- Use for Contracts with a Firm Schedule in Exhibit A]

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. The failure by Consultant to strictly adhere to the schedule may result in termination of this Agreement by City.

[Option B – Use in Place of Above Paragraph for Contracts without Firm Schedule]

Time is of the essence in the performance of Services under this Agreement and the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

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 to the other party so that all delays can be addressed.

- 3.1 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator 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.
- 3.2 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, fax, hand-delivery or mail.
- 3.3 **[Optional Provision- At discretion of Dept. Director]** The parties agree that it is extremely difficult and impractical to determine and fix the actual damages that City will sustain should the Consultant fail to complete the Work called for in this Agreement. Should Consultant fail to complete the Work called for in this Agreement, Consultant agrees to the deduction of liquidated damages in the sum of insert dollar amount Dollars and Insert Cents/100 (\$Insert \$) per day for every day beyond the date scheduled for completion provided in Section 3. Execution of this Agreement shall constitute agreement by the City and Consultant that the sum of insert dollar amount Dollars and Insert Cents/100 (\$Insert \$) per business day is the minimum value of costs and actual damages caused by the failure of Consultant to complete the project within the allotted time. Such sum is liquidated damages and shall not be construed as a penalty, and may be deducted from payments due the Consultant if such delay occurs.

4. COMPENSATION TO CONSULTANT

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 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 Insert Dollar Amount **Dollars and no/100 (\$Insert \$)** 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.

- 4.1 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.
- 4.2 City shall reimburse Consultant only for those costs or expenses specifically approved in this Agreement, or specifically approved in writing in advance by City. Unless otherwise approved, such costs shall be limited and include nothing more than the following costs incurred by Consultant:
 - A. The actual costs of subconsultants for performance of any of the Services that Consultant agrees to render pursuant to this Agreement, which have been approved in advance by City and awarded in accordance with this Agreement.
 - B. Approved reproduction charges.
 - C. Actual costs and/or other costs and/or payments specifically authorized in advance in writing and incurred by Consultant in the performance of this Agreement.
- 4.3 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.
- 4.4 **[Optional Provision- At Dept. Director discretion]** Notwithstanding any other provision of this Agreement, when payments made by City equal 90% of the maximum fee provided for in this Agreement, no further payments shall be made until City has accepted the final Work under this Agreement.

5. PROJECT MANAGER

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 Insert name Consultant's project mgr 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.

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.

[Optional Provision—For use on Public Works Projects] If Consultant is performing inspection or construction management services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. Consultant's cellular phone number will be provided to City.

6. ADMINISTRATION

This Agreement will be administered by the Insert Dept. Name **Department**. Insert name and title of City contact or his/her designee, shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his/her authorized representative shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

In order to assist Consultant in the execution of its responsibilities under this Agreement, City agrees to, where applicable:

- A. 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.
- B. Provide blueprinting and other Services through City's reproduction company for bid documents. Consultant will be required to coordinate the required bid documents with City's reproduction company. All other reproduction will be the responsibility of Consultant and as defined above.
- C. Provide usable life of facilities criteria and information with regards to new facilities or facilities to be rehabilitated.

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 community professional standards. All Services shall be performed by qualified and experienced personnel who are not employed by City, nor have any contractual relationship with City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement and all applicable federal, state and local laws and the professional standard of care.

- 8.2** Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force in 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.
- 8.3** 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, or 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.
- 8.4** **[Optional Provision- for use on Public Works Projects]** The term Construction Management or Construction Manager does not imply that Consultant is engaged in any aspect of the physical work of construction contracting. Consultant shall not have control over or be in charge of and shall not be responsible for the project's design, City's project contractor ("Contractor"), construction means, methods, techniques, sequences or procedures, or for any health or safety precautions and programs in connection with the Work. These duties are and shall remain the sole responsibility of the Contractor. Consultant shall not be responsible for the Contractors' schedules or failure to carry out the Work in accordance with the contract documents. Consultant shall not have control over or be responsible for acts or omissions of City, Design Engineer, Contractor, Subcontractors, or their Agents or employees, or of any other persons performing portions of the Work.

9. HOLD HARMLESS

[OPTION A: For Use in All Contracts Except Those With Architects, Engineers And Surveyors]

To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, 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, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

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.

[OPTION B: For Use with Design Professionals (ie. Engineers, Surveyors And Architects)]

To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers 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 the negligence, recklessness, or willful misconduct of the Consultant or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them.

Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence, active 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. 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 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, policies of insurance of the type and amounts described below and in a form satisfactory to City.

- A. Proof 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. 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 contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

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 by Consultant, his agents, representatives, employees or subconsultants. The cost of such insurance shall be included in Consultant's bid.

- B. 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.

C. Coverage Requirements.

- i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)) for Consultant's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Consultant shall require each subconsultant to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subconsultant's employees.

Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (ten (10) calendar days written notice of non-payment of premium) prior to such change.

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.

- ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
- iii. Automobile Liability Coverage. Consultant shall maintain automobile insurance 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 for each accident.
- iv. Professional Liability (Errors & Omissions) Coverage. 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) limit per claim and in the aggregate.

D. Other Insurance Provisions or Requirements.

The policies are to contain, or be endorsed to contain, the following provisions:

- i. 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 and insurance clauses from each of its subconsultants.
 - ii. Enforcement of Contract 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.
 - iii. 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.
 - iv. Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to 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.
- E. 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.
- F. Additional 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.

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

[OPTION A: No Subcontractors] The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of City. Consultant shall not subcontract any portion of the Work to be performed under this Agreement without the prior written authorization of City.

[OPTION B: Subcontractors Authorized] City and Consultant agree that subconsultants may be used to complete the Work outlined in the Scope of Services. The subconsultants authorized by City to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and 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

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.

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.

[Optional Paragraph—for use on Public Works Projects] All improvement and/or construction plans shall be prepared with indelible waterproof ink or electrostatically plotted on standard 24-inch by 36-inch Mylar with a minimum thickness of three mils.

Consultant shall provide to City 'As-Built' drawings, and a copy of digital ACAD and tiff image files of all final sheets within ninety (90) days after finalization of the Project. For more detailed requirements, a copy of the City of Newport Beach Standard Design Requirements is available from the City's Public Works Department.

18. COMPUTER DELIVERABLES

[Optional: Only Use if CADD data is called for under scope of Work] CADD data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the Work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; (b) the decline of accuracy or readability of CADD data due to inappropriate storage conditions or duration; or (c) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings shall be submitted to City in the version of AutoCAD used by CITY in ".dwg" file format on a CD, and should comply with the City's digital submission requirements for Improvement Plans. The City will provide AutoCAD file of City Title Sheets. All written documents shall be transmitted to City in the City's latest adopted version of Microsoft Word and Excel.

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 authorizes in writing the release of information.

20. OPINION OF COST

[Optional: Only use if an opinion of costs is called for in the scope of Services] Any opinion of the construction cost prepared by Consultant represents his/her judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to City.

21. 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 of any United States' letters patent, trademark, or copyright infringement, including costs, contained in Consultant's drawings and specifications provided under this Agreement.

22. RECORDS

Consultant shall keep records and invoices in connection with the Work 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.

23. 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.

24. 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 paragraph is intended to limit City's rights under the law or any other sections of this Agreement.

25. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

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

26. CONFLICTS OF INTEREST

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.

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.

27. NOTICES

All notices, demands, requests or approvals 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: Insert Name City Contact
Insert Dept Name Department
City of Newport Beach
3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92658
Phone: Insert Phone
Fax: Insert Fax

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

Attention: Insert Name
Insert Consultant Name
Insert Consultant Address

Phone: Insert Phone
Fax: Insert Fax

28. CLAIMS

The Consultant and the City expressly agree that in addition to any claims filing requirements set forth in the Contract and Contract documents, 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.*).

29. TERMINATION

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.

Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Agreement at any time by giving 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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 or age.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written above.

**APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY**

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

By: _____
Choose an attorney
Assistant City Attorney

By: _____
Choose a signatory.

ATTEST:

**CONSULTANT: INSERT VENDOR
NAME, a choose entity type**

By: _____
Leilani I. Brown
City Clerk

By: _____
Insert Name
Insert Title

By: _____
Insert Name
Insert Title

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

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