



**ENGINEERING & OPERATIONS  
BOARD OF DIRECTORS' MEETING  
MOULTON NIGUEL WATER DISTRICT  
27500 La Paz Road, Laguna Niguel  
April 14, 2014  
9:00 AM  
Approximate Meeting Time: 3 Hours**

1. CALL MEETING TO ORDER
2. APPROVE THE MINUTES OF THE FEBRUARY 18, 2014 SPECIAL ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING
3. PUBLIC COMMENTS  
*Persons wishing to address the Board of Directors on matters not listed on the Agenda may do so at this time. "Request To Be Heard" forms are available at the entrance to the Board Room. Comments are limited to five minutes unless further time is granted by the Presiding Officer. Submit form to the Recording Secretary prior to the beginning of the meeting.*

*Those wishing to address the Board of Directors on any item listed on the Agenda should submit a "Request To Be Heard" form to the Recording Secretary before the Presiding Officer announces that agenda item. Your name will be called to speak at that time.*

**PRESENTATION ITEMS**

4. South Orange County Wastewater Authority Update

**DISCUSSION ITEMS**

5. Consultant Selection for On-Call Professional Engineering Services
6. Reimbursement Agreement with City of Laguna Niguel
7. On-Call Asphalt and Concrete Repair Services for Fiscal Years 2014/15 and 2015/16

**INFORMATION ITEMS**

8. Conservation Program Update
9. Lower Salada Lift Station Report

10. Quarterly Construction Progress Report
11. Quarterly Communications License Program Report
12. Late Items (Appropriate Findings to be Made)
  - a. Need to take immediate action; and
  - b. Need for action came to District's attention after Agenda Posting. [Requires 2/3 vote (5 members) or unanimous vote if less than 2/3 are present]

### **CLOSED SESSION**

13. CONFERENCE WITH REAL PROPERTY NEGOTIATORS, Pursuant to Government Code Section 54956.8

*Property: 27500 La Paz Road, Laguna Niguel CA 92677 & 26161 Gordon Road, Laguna Hills, CA 92653*

*Under Negotiation: Price and terms of payment*

*Real Property Negotiators: Joone Lopez, Matt Collings, Kevin Turner, Mike Hartel*

### **ADJOURNMENT**

The Board of Directors' Meeting Room is wheelchair accessible. If you require any special disability related accommodations (i.e., access to an amplified sound system, etc.), please contact the Moulton Niguel Water District Secretary's office at (949) 831-2500 at least forty-eight (48) hours prior to the scheduled meeting. This agenda can be obtained in alternate format upon written request to the Moulton Niguel Water District Secretary at least forty-eight (48) hours prior to the scheduled meeting.

Agenda exhibits and other writings that are disclosable public records distributed to all, or a majority of, the members of the Moulton Niguel Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board of Directors are available for public inspection at the District Office, 27500 La Paz Road, Laguna Niguel, CA ("District Office"). If such writings are distributed to members of the Board less than seventy-two (72) hours prior to the meeting, they will be available in the reception area of the District Office at the same time as they are distributed except that, if such writings are distributed immediately prior to, or during the meeting, they will be available in the Board meeting room and on the District website at [www.mnwd.com](http://www.mnwd.com).



**DRAFT**  
**MINUTES OF THE SPECIAL MEETING OF THE**  
**ENGINEERING & OPERATIONS BOARD OF DIRECTORS OF THE**  
**MOULTON NIGUEL WATER DISTRICT**

**February 18, 2014**

A Special Meeting of the Engineering & Operations Board of Directors of the Moulton Niguel Water District was held at the District offices, 27500 La Paz Road, Laguna Niguel, California, at 9:00 AM on February 18, 2014. There were present and participating:

**DIRECTORS**

Scott Colton	Director
Richard Fiore	Director
Donald Froelich	Vice President/Chair
Gary Kurtz	Director
Larry Lizotte	Director
Brian Probolsky	Vice President (arrived at 9:02 a.m.)

Also present and participating were:

**STAFF MEMBERS, LEGAL COUNSEL, AND MEMBERS OF THE PUBLIC**

Joone Lopez	General Manager
Matt Collings	Assistant General Manager
Marc Serna	Director of Engineering & Operations
Kelly Winsor	Assistant to the General Manager
Eva Plajzer	Assistant Director of Engineering
Todd Novacek	Assistant Director of Operations
Ray McDowell	MNWD
Adrian Tasso	MNWD
Steve Merk	MNWD
James Isham	MNWD
Doug Zytkevicz	MNWD
Pat Giannone	Bowie, Arneson, Wiles & Giannone
Paige Gulck	Board Secretary

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### 1. CALL MEETING TO ORDER

*The meeting was called to order by Donald Froelich at 9:00 a.m.*

### 2. APPROVE THE MINUTES OF THE JANUARY 14, 2013 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

*MOTION DULY MADE BY SCOTT COLTON AND SECONDED BY RICHARD FIORE, THE MINUTES OF THE ENGINEERING AND OPERATIONS BOARD OF DIRECTORS MEETING DATED JANUARY 13, 2014 WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, AND LARRY LIZOTTE VOTING 'AYE', BRIAN PROBOLSKY WAS ABSENT.*

### 3. PUBLIC COMMENTS

*None.*

### **DISCUSSION ITEMS**

### 4. Regional Lift Station Pump Replacement Contract

*Marc Serna stated that the District received 5 bids and of those bids, staff recommends Schuler Engineering Corporation at a cost of \$246,400. Discussion ensued regarding the status of the District's other pumps, cost of the redesign, and specific changes to the request for proposal.*

### 5. Award of Engineering Services Agreement for Inspection Services, Project No. 2013.003 & 2013.011

*Eva Plajzer discussed the improvements for two of the District's reservoirs. Discussion ensued regarding cost, need, and liability.*

### 6. Arcon Contract Amendment, Project No. 2006.038

*Eva Plajzer explained that redesign was needed for cell towers throughout the District and that the amendment is needed to finish the contract with Arcon.*

### 7. Contract Amendment for Asphalt and Concrete Repair Construction Services Fiscal Year 2013/2014

*Marc Serna explained the amendment with Sanders Paving in the amount of \$225,000 is needed in order for the District to cover projected expenditures for asphalt and concrete repairs for the remainder of the fiscal year.*

**INFORMATION ITEMS**

**8. Encantamar Line Break Update**

*Steve Merk summarized the outcome of the Encantamar line break.*

**9. Upper Salada Valve Replacement Update**

*Eva Plajzer presented the final summary for the valve replacement project.*

**10. Water Loss Report**

*Adrian Tasso presented a powerpoint on the District's water loss for the 2013 calendar year. Discussion ensued regarding calculations and mitigation of water loss.*

**11. Quarterly Capital Improvement Program Report**

*Joone Lopez stated the report is available in the packet.*

**12. Late Items (Special Meeting - No Additions)**

*Staff has none.*

**ADJOURNMENT**

*The meeting was adjourned at 10:26 a.m.*

Respectfully submitted,

Paige Gulck  
Board Secretary





# Moulton Niguel Water District

## STAFF REPORT

**TO:** Board of Directors **MEETING DATE:** April 14, 2014

**FROM:** Marc Serna, Director of Engineering and Operations  
Eva Plajzer, Assistant Director of Engineering

**SUBJECT:** Consultant Selection for On-Call Professional Engineering Services

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### **SUMMARY:**

Issue: District staff issued Request for Proposals (RFP) for On-Call Professional Engineering Services.

Recommendation: It is recommended that the Board of Directors approve the Agreements for Engineering Services for On-Call Professional Engineering Services with AKM Consulting Engineers, Inc., Lee & RO, Inc., and Tetra Tech; and authorize the General Manager to execute the agreements.

Fiscal Impact: Each agreement will have a maximum contractual value of \$500,000 with a duration of three years. The total maximum value of the agreements is \$1,500,000. The agreements will be funded with projects from the Capital Improvement Program and the Operating Budget as needed for engineering services.

### **BACKGROUND:**

The Moulton Niguel Water District (District) has a substantial Capital Improvement Program (CIP) over the next 10 years. This program requires appropriate resources to evaluate the projects, prepare biddable documents, and construct the facilities. In order to facilitate the project evaluation and bid document preparation, additional engineering resources will be necessary. In addition to the Capital Improvement Program, engineering support is required in other aspects of District operations to provide technical support via operational studies and analysis.

The on-call contracts will allow staff to issue individual task orders to authorized firms with significant staff resources to assist the District in executing the CIP and providing operations engineering support. Each task order will be funded by a CIP project or dedicated operating budget funds as long as funds are available. Issuance of task orders will follow the District's purchasing policies. Fee proposals from all firms

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holding on-call contracts will typically be required for task orders over \$25,000. Task orders under \$25,000 may be awarded directly to a single on-call firm based on District needs. Each agreement and task order, also has a 10-day termination clause that allows the District to terminate the agreements at any time. As part of the Quarterly Capital Improvement Program Report, the status of the on-call contracts will be presented to the Board of Directors with a list of issued and completed task orders.

### **DISCUSSION:**

The District issued a Request for Proposals (RFP) for On-Call Professional Engineering Services. On February 28, 2014, the District received 17 proposals. The firms that submitted a proposal are:

- AKM Consulting Engineers
- Anderson Penna Partners, Inc.
- Arcadis U.S., Inc
- Atkins North America, Inc.
- Brady
- CH2M HILL
- Civil Source, Inc.
- Dudek
- Kennedy/Jenks Consultants
- Lee & RO, Inc.
- MWH Americas, Inc.
- PacRim Engineering
- PRP Engineering, Inc.
- Psomas
- RBF Consulting
- Stantec
- Tetra Tech

Staff carefully evaluated the proposals based on various factors to identify the best proposals for further consideration in an interview process. The factors that went into the initial screening of the proposals include: proposal completeness and quality, understanding of District needs over the next three years, technical qualifications of key personnel, relevant experience and past history with on-call agreements, and specific unique qualifications. Staff identified six firms that best met the above qualifications for further consideration. These firms include:

- AKM Consulting Engineers
- Atkins North America, Inc.
- CH2M HILL
- Lee & RO, Inc.
- RBF Consulting
- Tetra Tech

On April 1, 2014, staff conducted interviews with the selected firms. Each firm was given one hour to give a presentation and answer a set of pre-determined questions and additional questions based on their presentation. The presentations were evaluated based on content, quality, timeliness, and organization. The questions further evaluated the firm's ability to meet District needs, demonstration of their technical abilities, the Project Manager and team's ability to respond to questions, and their approach to a task order based contractual arrangement.

Based on the firm's performance in the interviews and their submitted proposal, the following three firms are recommended for a professional services agreement with the District:



- AKM Consulting Engineers
- Lee & RO, Inc.
- Tetra Tech

The contractual vehicle that will be used for the on-call services is provided as an attachment. Each firm will be issued an agreement that will facilitate individual task orders up to \$75,000 for a cumulative maximum of \$500,000 for the three years of the contract term.

Attachment: Agreement for Engineering Services



**AGREEMENT FOR ENGINEERING SERVICES BETWEEN  
MOULTON NIGUEL WATER DISTRICT AND**

**MNWD PROJECT: AS-NEEDED ENGINEERING SERVICES FOR CAPITAL  
IMPROVEMENT PROGRAM IMPLEMENTATION  
CONTRACT NO. OM13-14.020**

THIS AGREEMENT (the "Agreement") is executed and dated as of \_\_\_\_\_, 2014 ("Execution Date"), by and between \_\_\_\_\_, hereinafter referred to as the "ENGINEER" and Moulton Niguel Water District hereinafter referred to as "MNWD," and provides for the furnishing of engineering services to MNWD by ENGINEER. MNWD and ENGINEER may sometimes be referred to in this Agreement individually as "party" and together as "parties."

In consideration of the mutual covenants contained herein, the parties agree as follows:

**AGREEMENT**

**SECTION I – PURPOSE**

Section 1.1 ENGINEER shall provide as-needed engineering services to MNWD in connection with the implementation of capital improvement projects (the "Services") on a "Task Order" basis, as such term is defined and applied under this Agreement. This Agreement, including all attached Exhibits as well as each Task Order issued pursuant to the terms of Section III, form the Agreement between the parties ("Agreement").

**SECTION II – SCOPE OF SERVICES AND PERFORMANCE**

Section 2.1 The elements of the Services for each project Task Order under this Agreement shall include applicable sections of the Scope of Services described in **Exhibit A** hereto, which is incorporated herein (the "Scope of Services"). ENGINEER shall perform the Services in accordance with the Scope of Services under each Task Order, any requirements set forth in a Task Order (as defined in Section III), the terms of this Agreement, and as directed by MNWD. MNWD reserves the right to develop additional Services and related requirements as it deems appropriate for each Task Order to meet the needs and objectives of MNWD and this Agreement, subject to terms for changes in scope under Section 5.2 if applicable.

Section 2.2 ENGINEER acknowledges and agrees that MNWD does not guarantee any minimum or maximum amount of Services and MNWD may use other Engineers or Consultants for the Services in its sole discretion.

Section 2.3 ENGINEER shall provide all labor, materials, tools, equipment, supplies, utilities and transportation required to perform the Services, subject to compliance with the Agreement requirements, and complete all Services in a thorough, professional manner in accordance with generally accepted professional engineering practices and principles, and to the satisfaction of MNWD. ENGINEER shall have the sole and absolute discretion in determining the methods, details and means of performing the Services, and MNWD shall not have any right to direct the methods, details and means of the Services, provided that ENGINEER must receive prior written approval from MNWD before using any subconsultants in accordance with Section 2.5 herein. In performing the Services under this Agreement, ENGINEER shall observe and abide by the terms and conditions of all applicable laws, regulations, ordinances, or other rules of the

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United States, of the State of California, or any political subdivisions thereof, or of any other duly constituted public authority or agency including but not limited to MNWD.

Section 2.4 ENGINEER'S civil engineer, duly licensed in the State of California, who shall be the Principal in Charge of work, is \_\_\_\_\_. Without prior written approval of MNWD, ENGINEER will not make any changes to ENGINEER'S Principal in Charge, in subconsultants, in outside labor arrangements, or associations or joint ventures which are required to accomplish any part of the Services.

Section 2.5 If ENGINEER intends to subcontract certain Services, separate subcontracts may be entered into between ENGINEER and the subconsultants listed in **Exhibit B** hereto, which is incorporated herein, or as may be appended to any individual Task Order. Any additional subconsultants ENGINEER proposes to use for any Task Order are subject to prior written approval by MNWD and set forth in the Task Order. ENGINEER is as responsible to MNWD for the acts and omissions of its subconsultants as it is for persons directly employed by ENGINEER. Nothing contained in this Agreement creates any contractual relationship between any subconsultant and MNWD. ENGINEER shall not allow any subconsultant to commence Services under any subcontract until all insurance required of ENGINEER has been obtained for the subconsultant. ENGINEER shall require and ensure that its subconsultants maintain the same level of insurance coverage as required of ENGINEER in Section X of this Agreement.

### **SECTION III – TASK ORDERS**

Section 3.1 Each project and the related Services contemplated under this Agreement will be facilitated through written task orders (each a "Task Order"). The form of Task Order is attached hereto as **Exhibit C** and incorporated herein.

Section 3.2 Each Task Order shall be no greater than a maximum not-to-exceed amount of seventy-five thousand dollars (\$75,000), inclusive of any addenda thereto, with the sum of all Task Orders including addenda thereto not-to-exceed the total Agreement amount under Section IV.

Section 3.3 Each Task Order shall contain the Scope of Services specific to the project and related Services under consideration. In addition, each Task Order shall contain the fees, labor hours, and team proposed for the Task Order, and any approved subconsultants not otherwise listed in **Exhibit B**.

### **SECTION IV – ENGINEERING FEES**

Section 4.1 In consideration for providing the Services pursuant to this Agreement, MNWD agrees to compensate ENGINEER for Services under any Task Order on a time and materials basis at the rates and amounts in the Fee Schedule attached hereto as **Exhibit D** and incorporated herein. Total payments under this Agreement for all Task Orders collectively shall not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). This maximum amount is inclusive of 'labor costs' and 'reasonable direct costs' as defined herein below in Section 4.3 and 4.4.

Section 4.2 The Fee Schedule sets forth the current billing rates of ENGINEER. The Fee Schedule shall be in effect upon execution of this Agreement for the duration of the first term, as defined in Section VII. The Fee Schedule is limited to maximum increases of 3% for each extended one year term of this Agreement as provided for under Section VII, which allows a maximum of two extended one year terms. Any increases shall be by mutual agreement upon

execution of the amendment to extend each of the terms allowed.

Section 4.3 'Labor costs' shall be the total number of hours worked on the project Services by each employee of the ENGINEER multiplied by the applicable hourly billing rate based on the Fee Schedule set forth in Section 4.2, and as such Fee Schedule may be amended upon MNWD's exercise of the option for term extension(s) under Section VII.

Section 4.4 'Reasonable direct costs' shall include those costs as described in each Task Order.

Section 4.5 The mark-up percentage charged to MNWD for Services performed by ENGINEER'S subconsultants under this Agreement pursuant to any Task Order shall not exceed 5% of the amount billed to ENGINEER by its subconsultants.

Section 4.6 Monthly payments under a Task Order will be made based on submittal of invoices by ENGINEER. Invoices will include the date or period of Services, the number of hours worked by various labor categories, the hourly billing rate per individual, a complete description of the Services performed, the total amount due and, when requested by MNWD, any support documentation sufficient to validate the charges for each invoice item. Only one bill per month shall be submitted by ENGINEER, showing amounts due for ENGINEER and each subconsultant utilized during the monthly billing period. Incomplete invoices will be returned unpaid to ENGINEER. Each Task Order shall be billed on a separate invoice.

## **SECTION V - TASK ORDER COMPLETION**

Section 5.1 ENGINEER shall not begin work on any Services pursuant to this Agreement until receipt of MNWD'S issuance and execution of a Task Order and notice to proceed, and ENGINEER's execution of the Task Order. Upon receipt of such notice, ENGINEER shall immediately commence the Services described in the Task Order. The Services pursuant to each Task Order shall be completed in an expeditious manner from the date the Task Order and written notice to proceed are issued to ENGINEER, and in any event no later than the completion date listed on the Task Order. Time is of the essence in the performance and completion of the Services. In the event the time for completing the Services is projected to be exceeded due to circumstances beyond the control of ENGINEER, ENGINEER shall have an additional amount of time to be agreed upon in writing between the parties pursuant to Section 5.2, Task Order Amendment.

Section 5.2 Upon MNWD's request for additional or changed Services, ENGINEER shall provide a cost estimate and written description of the additional or changed Services. Prior to any such addition, changes, or deletion to the Scope of Services, MNWD and ENGINEER shall negotiate an adjustment of the compensation and completion date and shall execute a written addendum to the Task Order. Upon execution of each addendum, (i) the Scope of Services shall thereafter be as described in the Task Order, respectively, as modified by the addendum and any previously executed addendum; and (ii) the time for completing the Services shall be as set forth in the addendum. Following execution of any amendment, all terms and provisions of the Agreement, except as expressly modified by such amendment, shall remain in full force and effect. MNWD will not be required to pay for any additional or changed work rendered in advance of the execution of an amendment covering the additional or changed work.

Section 5.3 MNWD may require ENGINEER's assistance on an emergency basis. Emergency Services shall be performed only after written direction is received from MNWD. A Task Order will be issued to ratify the emergency Services

**SECTION VI - DOCUMENTATION AND OWNERSHIP**

Section 6.1 MNWD shall make available to ENGINEER at no cost all technical data in MNWD's possession, including maps, past reports, prior studies, prior plan operating data, and other information reasonably required by ENGINEER and relating to the Services to be performed under this Agreement.

Section 6.2 ENGINEER will furnish to MNWD the agreed upon number of reports and supporting documents as specified in each Task Order. These instruments of service are furnished for MNWD's use in connection with the project Services provided for in this Agreement and shall become MNWD's property upon receipt.

Section 6.3 All original drawings and other documents, including detailed calculations developed for the Project shall, upon payment in full for the Services under each Task Order or as otherwise provided in Section IV herein, be furnished to and become the property of MNWD. ENGINEER may retain a copy of all reports and documents for their files, subject to all other terms and provisions of this Agreement related to confidentiality.

**SECTION VII – TERM**

Section 7.1 The term of this Agreement shall commence upon the Execution Date and shall remain in effect for a period of three (3) years thereafter, unless otherwise terminated by either party pursuant to Section VIII herein; provided, this Agreement will be deemed to automatically extend and apply to any Task Orders executed under this Agreement that are outstanding at the end of a term.

**SECTION VIII - TERMINATION OR ABANDONMENT**

Section 8.1 This Agreement may be terminated in whole or in part in writing by either party provided that no such termination may be effected unless the other party is given not less than ten (10) calendar day's written notice (deliver by certified mail, return receipt requested) of intent to terminate. Additionally, MNWD may suspend performance by ENGINEER of any or all Services listed in the Scope of Services and/or any Task Order under this Agreement by providing written notice to ENGINEER at least five (5) working days prior to the date on which MNWD wishes to suspend; provided, upon receipt of such notice, ENGINEER shall immediately suspend any work or Services hereunder, unless otherwise instructed by MNWD in such notice.

Section 8.2 ENGINEER shall not perform further work or Services under this Agreement after the effective date of suspension until receipt of written notice from MNWD to resume performance. MNWD and ENGINEER agree that in the event MNWD suspends or terminates performance by ENGINEER for any cause other than the intentional or negligent error or omission of ENGINEER, ENGINEER shall be entitled to payment of compensation incurred prior to the effective date of the suspension or termination, as determined under Section IV of this Agreement.

Section 8.3 In the event of any suspension or termination herein, MNWD shall have the right to take possession and shall immediately own all original drawings and other documents developed for that portion of the work or Services completed and/or being suspended or abandoned.

## **SECTION IX - CONFIDENTIALITY**

### **Section 9.1**

A. ENGINEER understands that all documents, records, reports, data or other materials (collectively "Materials") provided by MNWD to ENGINEER pursuant to this Agreement, including but not limited to draft reports, final reports and all data, information, documents, graphic displays and other items that are not proprietary to ENGINEER and that are utilized or produced by ENGINEER pursuant to this Agreement are to be considered confidential for all purposes.

B. ENGINEER shall be responsible for protecting the confidentiality and maintaining the security of Materials and records in its possession. All Materials shall be deemed confidential and shall remain the property of MNWD. ENGINEER understands the sensitive nature of the above and agrees that neither its officers, partners, employees, agents or subconsultants will release, disseminate, or otherwise publish said reports or other such data, information, documents, graphic displays, or other materials except as provided herein or as authorized, in writing, by MNWD. ENGINEER agrees not to make use of such Materials for any purpose not related to the performance of the Services under this Agreement. ENGINEER shall not make written or oral disclosures thereof, other than as necessary for its performance of the Services hereunder, without the prior written approval of MNWD. Disclosure of confidential Materials shall not be made to any individual, agency, or organization except as provided for in the Agreement or as provided by law.

C. All confidential Materials saved or stored by ENGINEER in an electronic form shall be protected by adequate security measures to ensure that such confidential Materials are safe from theft, loss, destruction, erasure, alteration, and any unauthorized viewing, duplication, or use. Such security measures shall include, but not be limited to, the use of current virus protection software, firewalls, data backup, passwords, and internet controls.

The provisions of this Section IX survive the termination or completion of the Agreement.

## **SECTION X - INSURANCE AND INDEMNIFICATION**

**Section 10.1 Professional Liability Insurance.** ENGINEER and each of its subconsultants shall maintain throughout the term of this Agreement a professional liability (errors and omissions) policy of insurance having coverage of not less than One Million Dollars (\$1,000,000) for each claim and in annual aggregate. The following provisions shall apply if the professional liability coverage is written on a claims-made basis:

- (a) The retroactive date of the policy must be shown and must be before the dated date of this Agreement.
- (b) Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of this Agreement or the Services.
- (c) If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this Agreement, ENGINEER must provide extended reporting coverage for a minimum of three (3) years after completion of the Services. MNWD shall have the right to exercise at the ENGINEER's cost any extended reporting provisions of the policy should the

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ENGINEER cancel or not renew the coverage.

(d) A copy of the claims reporting requirements must be submitted to MNWD prior to the commencement of any work or Services under this Agreement.

Section 10.2 General/ Automobile Liability Insurance. ENGINEER and each of its subconsultants shall maintain throughout the term of this Agreement a general liability policy of insurance for bodily injury and/or death, personal injury and property damage claims which may arise from or in connection with the performance of the work under this Agreement by ENGINEER and its subconsultants, and each of their agents, representatives, or employees. Such public liability and property damage insurance (which shall cover claims, injury, death, loss or damage or accidents from the use or operation of any automobiles, trucks and/or other mobile or stationary equipment, whether owned, non-owned or hired) shall be comprehensive in form and shall be on a "per occurrence" basis in a minimum amount of One Million Dollars (\$1,000,000) per occurrence and an annual aggregate limit in a minimum amount at least twice the per occurrence limit specified in this section.

All insurance provided under this Section 10.2 shall name MNWD and its' directors, officers, employees and representatives as additional insureds under each such policy ("additional insureds") and an additional insured endorsement shall be provided in a form acceptable to MNWD.

Section 10.3 Worker's Compensation. By its signature hereunder, ENGINEER certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that ENGINEER will comply with such provisions before commencing the performance of work under this Agreement. ENGINEER and subconsultants shall maintain throughout the term of this Agreement workers' compensation insurance with limits no less than the statutory limits, and Employer's Liability insurance with limits no less than One Million Dollars (\$1,000,000 ) per accident and per disease for their employees and shall file with the MNWD the certificate required by Labor Code Section 3700. The workers compensation/Employer's Liability insurance shall be endorsed with a waiver of subrogation in favor of MNWD and its' directors, officers, employees and representatives.

Section 10.4 Requirements of All Policies. All policies of insurance required under this Section X shall be from insurance providers who are either admitted or licensed to do business in California, or are Surplus Lines Carriers authorized to do business in California, and who have financial size and ratings of no less than A-, Class XIII, and in either case are otherwise acceptable to MNWD. All such policies shall include a provision and executed endorsement for thirty (30) days prior written notice by certified mail, return receipt requested, to MNWD of any cancellation or material alteration of such insurance. ENGINEER shall provide original certificates and endorsements for all such insurance on forms approved by MNWD in conformity with all requirements of this Agreement prior to commencement of any work or professional services. The policies required hereunder shall be endorsed to include contractual liability.

In the case of additional insured provisions, any insurance afforded the additional insureds by this Agreement is primary insurance as to the additional insureds. Any insurance or self-insurance maintained by the additional insureds shall be excess of the ENGINEER's (and its subconsultants') insurance, and shall not contribute to such insurance.

Any deductibles or self-insured retentions must be declared in writing and approved by MNWD. At the option of MNWD, either: the insurance provider(s) shall reduce or eliminate such



deductibles or self-insured retentions as respects the MNWD and its' directors, officers, employees and representatives; or the ENGINEER shall provide a financial guarantee satisfactory to MNWD guaranteeing payment of losses and related investigations, claim administration and defense expenses. Maintenance of insurance coverage as specified in this Agreement is a material term of this Agreement, and any failure to maintain or renew coverage, or to provide evidence thereof, as required by the terms is a material breach of this Agreement.

Section 10.5 Indemnity. ENGINEER shall hold harmless, indemnify and defend, including the cost to defend, MNWD and its directors, officers, employees and representatives from liability, claims, losses, damages, demands, actions, attorneys' fees, costs and expenses (i) for personal injury, bodily injury or property damage that arise out of, pertain to, or relate to the operations, work and the Services of the ENGINEER and its subconsultants under this Agreement, and (ii) that arise out of, pertain to, or relate to ENGINEER's or its subconsultant's negligence including negligent acts, errors or omissions, recklessness, or willful misconduct in the performance (or actual or alleged non-performance) of the professional services under this Agreement.

The provisions of this Section are intended to be, and shall be interpreted in a manner that is consistent with Civil Code Section 2782.8 as it exists as of the date of this Agreement. The ENGINEER'S obligations pursuant to this Section shall survive the expiration or termination of this Agreement and/or the performance or completion of any or all Services and work provided under this Agreement. This indemnity obligation shall apply to all liability regardless of whether any insurance is applicable, and the policy limits of any insurance shall not act as a limitation upon the indemnification, and amounts related thereto, to be provided by ENGINEER hereunder.

## **SECTION XI - WARRANTY/DISCLAIMER**

Section 11.1 ENGINEER is employed to render engineering services pursuant to this Agreement only, and any payments made to ENGINEER are compensation solely for such services as it may render and recommendations it may make in carrying out the work or Services. ENGINEER makes no warranty, either expressed or implied, as to its services furnished under this Agreement, including any findings, opinions, recommendations, factual presentations, or professional advice, other than that such services will be performed in accordance with generally accepted professional engineering practices and principles.

Section 11.2 ENGINEER will provide any construction or operation and maintenance cost opinions based on exercise of its' experience and judgment in applying presently available cost data, but it is recognized that ENGINEER has no control over cost of labor and materials, or over competitive bidding proceedings and market conditions, so that it cannot warrant that construction or capital costs will not vary from such costs estimates.

Section 11.3 In performing services under this Agreement, ENGINEER shall observe and abide by the terms and conditions of all applicable laws, regulations, ordinances, or other rules of the United States, of the State of California, or any political subdivisions thereof, or of any other duly constituted public authority or agency including but not limited to MNWD. ENGINEER shall procure and maintain all permits, licenses and other governmental required certifications necessary for the performance of the Services, at the sole cost of ENGINEER.

Section 11.4 If the Project results in construction of any kind, the parties agree MNWD and ENGINEER shall be indemnified by the contractor for all claims, damages, losses and expenses arising out of or resulting from the contractor's performance of work including injury to any worker on the job site except for the negligence of MNWD or ENGINEER, such indemnity to be

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in accordance with MNWD's construction documents. MNWD and ENGINEER shall be named as additional primary insured(s) by contractor's General Liability Insurance policies without offset and all construction documents and insurance certificates shall include wording to such effect.

ENGINEER and MNWD shall not be responsible for the means, methods, techniques, sequences, or procedure of construction selected by contractors or the safety precautions and programs incident to the work of contractor and will not be responsible for a contractor's failure to carry out work in accordance with contract documents.

The Services to be performed by ENGINEER are intended solely for the benefit of MNWD. Nothing contained herein shall confer any rights upon or create any duties on the part of ENGINEER toward any person or persons not a party to this Agreement including, but not limited to any contractor, subcontractor, supplier, or the agents, officers, employees, insurers, or sureties of any of them. Any reuse of documents or data for other than the intended use shall be at the sole risk of MNWD.

### **SECTION XII - GENERAL**

Section 12.1 ENGINEER represents that it is aware of no facts or circumstances which would impair its ability to provide fair and unbiased advice to MNWD in the course of performing the engineering services hereunder, or which would impact its objectivity in performing such services hereunder.

Section 12.2 This Agreement represents the entire understanding of MNWD and ENGINEER as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be amended, modified or altered except in writing, signed by the parties. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared it. In the event of any inconsistency between this Agreement and any other agreement or document between the parties, either written or verbal, including any ENGINEER proposal document, this Agreement shall control.

Section 12.3 This is a non-exclusive Agreement for the services contemplated herein.

Section 12.4 Any notice required or permitted to be given hereunder if not otherwise specified herein may be given or delivered by depositing the same in the United States Post Office, registered or certified, postage prepaid, or by personal service a hand delivery, and addressed to:

To MNWD -

Attn: Marc Serna  
Director of Engineering and Operations  
Moulton Niguel Water District  
27500 La Paz Road  
Laguna Niguel, CA 92677-3489

To ENGINEER -      Attn:   Name  
   Organization  
   Address  
   City  
   Phone

Section 12.5 California law shall govern the interpretation of this Agreement. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure 394.

Section 12.6 In the event an action is commenced by either party to enforce its rights or obligations arising from this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the court, shall be entitled to recover all costs and expenses, including court costs, plus a reasonable amount for attorney's fees.

Section 12.7 If any section of this Agreement or provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

Section 12.8 It is expressly understood and agreed that ENGINEER is retained as an independent contractor for the sole purpose of rendering the professional and/or special Services, and is not an employee or agent of MNWD. ENGINEER warrants that it will not represent, at any time or in any manner, that ENGINEER is an employee or agent of MNWD. ENGINEER shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of MNWD. ENGINEER shall be solely responsible for the payment of all federal, state and local income tax, social security tax, Workers' Compensation insurance, state disability insurance, and any other taxes or insurance ENGINEER, as an independent contractor, is responsible for paying under federal, state or local law. ENGINEER is thus not eligible to receive workers' compensation, medical, indemnity or retirement benefits, including but not limited to enrollment in CalPERS.

Section 12.9 This Agreement and all of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment of this Agreement or any interest herein shall be made by ENGINEER without prior written consent of MNWD.

Section 12.10 The person signing this Agreement on behalf of each party hereto represents he/she has authority to sign on behalf of, respectively, MNWD or ENGINEER. This Agreement may be executed in counterparts, each of which shall be deemed an original.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2104 (“Execution Date”).

Moulton Niguel Water District

By: \_\_\_\_\_  
Joone Lopez  
General Manager

ENGINEER – [insert name]

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

SCOPE OF SERVICES AS BASIS FOR EACH TASK ORDER

**#5.**

**EXHIBIT B**

LIST OF APPROVED SUBCONSULTANTS

EXHIBIT C

TASK ORDER FORM

[To be executed by DISTRICT and ENGINEER prior to commencement of Services;]

This Task Order is executed pursuant to the "AGREEMENT FOR ENGINEERING SERVICES BETWEEN MOULTON NIGUEL WATER DISTRICT AND \_\_\_\_\_ AS-NEEDED ENGINEERING SERVICES FOR CAPITAL IMPROVEMENT PROGRAM IMPLEMENTATION (Contract No. OM13-14.020)" dated \_\_\_\_\_, 2014 (the "Agreement"). The Agreement terms are fully incorporated in this Task Order. Terms used in this Task Order have the same meanings given in the Agreement.

Task Order No.: \_\_\_\_\_

Task Order Scope of Services:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Authorized Not-to Exceed Task Order Amount\*: \$ \_\_\_\_\_

\*ENGINEER to attach Fee Schedule, description of reasonable direct costs; list of Subconsultants; list of deliverables and number copies.

Task Order Completion Date: \_\_\_\_\_

Notice to Proceed Given: [Date] \_\_\_\_\_

EXECUTED, ACKNOWLEDGE AND AGREED:

\_\_\_\_\_ DATE: \_\_\_\_\_

MNWD's Representative: Title

\_\_\_\_\_  
ENGINEER's Authorized Representative - (print name/title here)

\_\_\_\_\_  
Signature DATE: \_\_\_\_\_

**#5.**

**EXHIBIT D**  
FEE SCHEDULE





# Moulton Niguel Water District

## STAFF REPORT

**TO:** Board of Directors **MEETING DATE:** April 14, 2014

**FROM:** Marc Serna, Director of Engineering and Operations  
Eva Plajzer, Assistant Director of Engineering

**SUBJECT:** Reimbursement Agreement with City of Laguna Niguel

---

### **SUMMARY:**

Issue: Reimbursement Agreement to fund recycled water conversions for the City of Laguna Niguel's Crown Valley Medians Project.

Recommendation: It is recommended that the Board of Directors approve the "Agreement Between City of Laguna Niguel and Moulton Niguel Water District for Installation of Recycled Water Meters and Recycled Infrastructure in Conjunction with Construction of the Runoff Elimination Program for Crown Valley Parkway Medians" (Agreement) subject to non-substantive changes approved by the General Manager and Legal Counsel; and authorize the General Manager to execute the Agreement.

Fiscal Impact: The WBBRS Efficiency Fund has sufficient balance to cover the reimbursements identified in this agreement.

### **BACKGROUND:**

The purpose of the City of Laguna Niguel (City) Runoff Elimination Program for Crown Valley Parkway Medians Project (Project) is to conserve water, reduce urban runoff, improve worker safety, reduce street pavement damage, and enhance the aesthetic character of Crown Valley Parkway along its entire 5-mile length within the city, between Cabot Road and Camino del Avion. The Project will replace aging and inefficient irrigation systems with new low-precipitation-rate systems; convert the water source from potable to recycled water, where available; and set the sprinklers back from the road edge behind a safety mow strip, along the entire length of the Project. Project construction is expected to begin in late spring 2014.

The Project is currently irrigated by eight potable water meters with an average annual potable water usage of 23.1 acre-feet. The City identified various conversion retrofits to take the Project off potable water and convert to recycled water. These

## **#6.**

retrofits include the installation of new service lines and meters, and the purchase and installation of irrigation system pumps and the associated electrical services where necessary. The costs for the conversions are estimated to be \$280,000. At the February 20, 2014, Board Meeting, the Board of Directors approved the expenditure of funds from the Efficiency Fund for the conversion of this project from potable water to recycled water.

### **DISCUSSION:**

The City is on an accelerated schedule with the Project and would like to construct all improvements as part of their construction effort. As such, the City and District have developed a reimbursement agreement to cover costs for conversion from potable to recycled water. The reimbursement agreement describes the expenditure limit of \$280,000, the covered costs, inspection and review requirements, and the distinct responsibilities of the City and District.

On April 1, 2014, the Council for the City approved the agreement subject to non-substantive changes as approved by the City's legal counsel. Staff is requesting the Board of Directors approve the agreement subject to non-substantive changes as approved by the District's legal counsel and General Manager, and authorize the General Manager to execute the agreement.

Attachments: Reimbursement Agreement

**AGREEMENT BETWEEN CITY OF LAGUNA NIGUEL AND  
MOULTON NIGUEL WATER DISTRICT FOR INSTALLATION OF  
RECYCLED WATER METERS AND RECYCLED WATER INFRASTRUCTURE  
IN CONJUNCTION WITH CONSTRUCTION OF THE RUNOFF ELIMINATION  
PROGRAM FOR CROWN VALLEY PARKWAY MEDIANS**

This Agreement (“AGREEMENT” herein), dated and effective the \_\_\_\_\_ day of \_\_\_\_\_, 2014 (“Effective Date”), is by and between the **CITY OF LAGUNA NIGUEL**, hereinafter referred to as “CITY” and **MOULTON NIGUEL WATER DISTRICT**, hereinafter referred to as “DISTRICT.” CITY and DISTRICT are sometimes referred to in this AGREEMENT individually as “party,” or jointly as “parties.”

RECITALS

A. CITY intends to construct a public improvement project commonly known as the “Runoff Elimination Program for Crown Valley Parkway Medians” (“PROJECT” herein). The PROJECT includes comprehensive replacement and updating of median irrigation systems, partial replacement of median turf with water-conserving plants, and conversion of potable water services to recycled water services in CITY street medians and CITY-maintained side-slopes along Crown Valley Parkway between Cabot Road and Camino del Avion. CITY confirms that it previously completed CEQA proceedings for the PROJECT including the “INFRASTRUCTURE RETROFITS” as defined and described in the following Recitals, and that the applicable statute of limitations has run with respect to any CEQA challenges to the PROJECT.

B. As part of the PROJECT, CITY and DISTRICT have determined that expenditures for the following improvements when implemented by CITY, as depicted in Exhibit A, will be reimbursed by the DISTRICT, subject to the total expenditure limit set forth in this AGREEMENT:

- a) Conversion of eight (8) potable water services to recycled water service, installation of six (6) booster pumps to augment water pressure, and installation of four (4) electric meter services to provide power to the pumps (collectively, the “INFRASTRUCTURE RETROFITS”), which are reimbursable at cost.

C. In order to meet schedules associated with CITY’S grant funding for the PROJECT from the Orange County Transportation Authority, CITY has determined the best course of action is to incorporate the design and construction of the INFRASTRUCTURE RETROFITS into CITY’s contract for the PROJECT, and District is agreeable to such approach, subject to the terms and conditions set forth in this AGREEMENT. The parties agree that DISTRICT has no responsibility or liability in connection with the grant funding, and that CITY assumes complete responsibility for any possible liability associated with the grantee receiving such funding.

**NOW THEREFORE, IT IS AGREED by and between the parties as follows:**

**SECTION I**

**CITY, IN ADDITION TO ANY OBLIGATIONS AND RESPONSIBILITIES, AND RIGHTS, SET FORTH IN SECTIONS II AND III HEREOF, SHALL:**

1. Direct CITY's Engineer to incorporate the design of the INFRASTRUCTURE RETROFITS into the PROJECT plans and specifications. The INFRASTRUCTURE RETROFITS design shall meet the requirements of the DISTRICT's standard plans and specifications and shall be subject to approval by the DISTRICT.
2. Include individual bid items in PROJECT plans and specifications for the installation of the INFRASTRUCTURE RETROFITS, including any connections to existing DISTRICT pipelines (as will be specified by DISTRICT in accordance with SECTION II.4. below), relevant appurtenances, and appropriate testing as required under the approved PROJECT plans and specifications for the INFRASTRUCTURE RETROFITS, such bid items and terms structured so as to prevent disproportionate allocation of PROJECT costs to the INFRASTRUCTURE RETROFITS bid items; and provide the PROJECT bid documents and schedule of work items to DISTRICT prior to soliciting bids for DISTRICT review and approval, which shall not be unreasonably withheld.
3. Solicit competitive bids for the PROJECT including the INFRASTRUCTURE RETROFITS, and award a construction contract to the lowest responsive and responsible bidder, hereinafter referred to as "CONTRACTOR."
4. Prior to award of the contract for the PROJECT, provide a complete set of construction contract documents to DISTRICT which shall identify all sub-contractors, including those who will be suppliers, or accomplish work, with respect to the INFRASTRUCTURE RETROFITS, as well as line item bid prices for all PROJECT work, including work for the INFRASTRUCTURE RETROFITS.
5. Award the construction contract to CONTRACTOR and oversee and administer the construction contract, including those elements of the PROJECT and the construction contract related to the INFRASTRUCTURE RETROFITS work.
6. Provide shop drawing and material submittals associated with the INFRASTRUCTURE RETROFITS for review and approval by DISTRICT. DISTRICT shall review and comment on all shop drawing submittals within twenty (20) calendar days from the date received by DISTRICT. If DISTRICT fails to comment on the submittal within the twenty (20) day period, that shall be deemed an approval by DISTRICT of the submittal.
7. Furnish a representative to perform the usual functions of a CITY inspector, hereinafter referred to as "INSPECTOR," who shall be responsible for monitoring and inspecting the CONTRACTOR's performance. CITY, through the INSPECTOR, shall provide written notice of when INFRASTRUCTURE RETROFITS connections to existing DISTRICT facilities are

scheduled at least 72 hours in advance to the "DISTRICT REPRESENTATIVE" (to the extent DISTRICT designates a "DISTRICT REPRESENTATIVE" as such term is defined below in Section II.3).

8. Issue construction contract change orders (CCOs) as required for the INFRASTRUCTURE RETROFITS, but only after review and written approval by DISTRICT. DISTRICT's approval shall not be unreasonably withheld and DISTRICT shall respond to requests for approval in a timely manner, as further set forth in SECTION II.3. CCOs are subject to the expenditure limit set forth in this AGREEMENT and as discussed more particularly in Section II.7. hereof.

9. Pay all costs under the construction contract for the INFRASTRUCTURE RETROFITS that exceed the expenditure limit described under Section II.7. applicable to DISTRICT'S financial responsibility for reimbursement to CITY for the approved INFRASTRUCTURE RETROFITS. Pay all design, bid preparation and any other administrative costs associated with the PROJECT including the INFRASTRUCTURE RETROFITS.

10. Incorporate within the contract documents for the PROJECT a requirement for CONTRACTOR to obtain and keep in full force and effect throughout the duration of PROJECT, for the mutual benefit of CITY and DISTRICT, Commercial General Liability insurance with a limit of at least one million dollars (\$1,000,000) per occurrence with a minimum aggregate for the PROJECT of at least two million dollars (\$2,000,000) and Commercial Automobile Liability insurance with a limit of at least one million dollars (\$1,000,000). Said policies shall name CITY and DISTRICT, and each of their elected and appointed officials, officers, employees and agents, as additional insureds by separate endorsements, and shall, additionally, contain language providing for waiver of subrogation, that the policies are primary and noncontributing with any insurance that may be carried by the parties, that said insurance may not be cancelled or materially changed except upon thirty (30) calendar days written notice to CITY. CITY shall also require that worker's compensation benefits are secured by CONTRACTOR as required by law, with a waiver of subrogation endorsement against CITY and DISTRICT. CITY shall also incorporate in the PROJECT contract documents terms for CONTRACTOR's indemnification of DISTRICT, and DISTRICT's elected and appointed officials, officers, employees and agents, which shall be consistent with the CONTRACTOR's indemnity applicable to CITY.

11. Require CONTRACTOR to construct the INFRASTRUCTURE RETROFITS to the written approval of DISTRICT. CITY shall not accept PROJECT work from CONTRACTOR until DISTRICT concurs that the INFRASTRUCTURE RETROFITS construction work has been performed to DISTRICT's written approval and in accordance with CITY's plans and specifications for the PROJECT.

12. Require CONTRACTOR to provide a one-year warranty and a warranty bond for the INFRASTRUCTURE RETROFITS for the benefit of DISTRICT. This warranty and bonding requirement is to be stated in the plans and specifications, and contract documents, for the PROJECT.

13. Upon completion of the INFRASTRUCTURE RETROFITS work and DISTRICT's written acceptance of INFRASTRUCTURE RETROFITS, provide a final accounting report and

## #6.

invoice detailing the item costs for the INFRASTRUCTURE RETROFITS work for review and approval by DISTRICT, which approval shall not be unreasonably withheld, subject to the maximum expenditure limit under this AGREEMENT. Subject to the foregoing limit and conditions, DISTRICT shall pay CITY within sixty (60) calendar days of receipt of said invoice.

14. Upon filing of the Notice of Completion for the PROJECT, and the expiration of all lien periods, CITY shall execute a dedication of the recycled water services as constructed in the INFRASTRUCTURE RETROFITS in the form of **Exhibit B** hereto to the DISTRICT for DISTRICT to assume ownership of the recycled water services. CITY retains ownership and remains responsible for the protection of the recycled water services until such time as the dedication is executed and accepted by DISTRICT. All remaining aspects of the INFRASTRUCTURE RETROFITS will be retained by the CITY.

15. Pursuant to Section 895.4 of the Government Code, defend with counsel approved in writing by DISTRICT, and indemnify and hold and save harmless DISTRICT and its elected and appointed officials, officers, agents and employees, from all liability from loss, damage or injury to persons or property, including any and all legal costs and attorneys' fees, in any manner arising out of the performance, by CITY, its elected and appointed officials, officers, agents and employees, of CITY's obligations under this AGREEMENT or the contract for the PROJECT.

## SECTION II

### **DISTRICT, IN ADDITION TO ANY OBLIGATIONS AND RESPONSIBILITIES, AND RIGHTS, SET FORTH IN SECTIONS I, AND III HEREOF, SHALL:**

1. Be responsible for review and approval of the design of the INFRASTRUCTURE RETROFITS based on CITY's Engineer's design request and the contract plans and specifications, and for the CCOs as described in paragraph 3 below for the INFRASTRUCTURE RETROFITS. DISTRICT shall not unreasonably delay the CONTRACTOR in the written approval of work related to the INFRASTRUCTURE RETROFITS.

2. Be invoiced for the INFRASTRUCTURE RETROFITS at CITY'S actual cost, as the CONTRACTOR completes construction of INFRASTRUCTURE RETROFITS in accordance with progress payment terms under the PROJECT contract documents, and subject to the expenditure limit and conditions under this AGREEMENT. Upon review and approval, and subject to the foregoing limits and conditions, DISTRICT shall pay all such invoices within thirty (30) days of receipt from CITY.

3. Review and approve CCOs issued by CITY specifically related to the INFRASTRUCTURE RETROFITS, and be responsible for all CCO costs pertaining to INFRASTRUCTURE RETROFITS, but subject to the maximum expenditure limit on DISTRICT reimbursement to the CITY set forth in Section II.7. DISTRICT shall not unreasonably withhold consent to such CCO's and DISTRICT shall pay to CITY the cost of the CCO's for any approved INFRASTRUCTURE RETROFITS work within thirty (30) days of receipt of a written request for such payment from CITY, provided the expenditure limit has not been exceeded.

4. At DISTRICT's own cost, option and sole discretion, furnish a representative to provide inspection of all hot-tapping and water meter installations; and at DISTRICT's own cost, option and sole discretion, furnish a representative to assist over-seeing of installation of the other INFRASTRUCTURE RETROFITS, hereinafter referred to as "DISTRICT REPRESENTATIVE." DISTRICT REPRESENTATIVE and INSPECTOR shall cooperate and consult with each other. Should INSPECTOR and DISTRICT REPRESENTATIVE be unable to reach agreement, the decision of INSPECTOR shall be final, provided the INFRASTRUCTURE RETROFITS are constructed to DISTRICT's plans, standards and specifications. Specific inspection for all INFRASTRUCTURE RETROFITS work by CONTRACTOR within the pipe trench and for all connections to existing facilities owned by DISTRICT shall be performed to the full satisfaction of the DISTRICT, or as applicable, DISTRICT REPRESENTATIVE.

5. Coordinate bypass and/or shutdown of existing DISTRICT potable and recycled water pipelines with CONTRACTOR to facilitate connections and/or reconstruction associated with INFRASTRUCTURE RETROFITS. CONTRACTOR will identify a schedule for the INFRASTRUCTURE RETROFITS and include a proposed bypass/outage period to be submitted to CITY and approved in writing by DISTRICT, which can be adjusted if required for the work of the INFRASTRUCTURE RETROFITS, and as approved by INSPECTOR and DISTRICT, or as applicable, DISTRICT REPRESENTATIVE.

6. Upon completion of the INFRASTRUCTURE RETROFITS and within sixty (60) calendar days of receipt of an invoice and final accounting report from CITY, DISTRICT shall provide to CITY final payment for INFRASTRUCTURE RETROFITS work not otherwise paid previously, determined as the sum of 6a and 6b below:

- a. The actual sum of the line item prices bid for the construction of INFRASTRUCTURE RETROFITS as listed in the bid schedule from CONTRACTOR, as adjusted for any deductions if applicable.
- b. CCO expenses previously approved by DISTRICT related to work for INFRASTRUCTURE RETROFITS and not already paid by DISTRICT, if any, shall be added to the above.

7. The total payment for the INFRASTRUCTURE RETROFITS paid by the DISTRICT to the CITY shall not exceed two hundred eighty thousand dollars (\$280,000) (the "expenditure limit"), and all the terms set forth in this AGREEMENT are subject to this expenditure limit. CITY is not eligible for reimbursement of any CITY design or administrative costs or any other costs related to the PROJECT other than as otherwise set forth above under Section II. 6.

8. Pursuant to Section 895.4 of the Government Code, defend with counsel approved in writing by CITY, and indemnify and hold and save harmless CITY and its elected and appointed officials, officers, agents and employees, from all liability arising from loss, damage or injury to persons or property, including any and all legal costs and attorney's fees, in any manner arising out of the performance, by DISTRICT, its elected and appointed officials, officers, agents and employees, of DISTRICT's obligations under the AGREEMENT.

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9. Within ninety (90) days of filing of a Notice of Completion of the PROJECT by CITY and expiration of all lien periods, accept ownership by a dedication of facilities (**Exhibit B**) of the recycled water services as installed by the INFRASTRUCTURE RETROFITS.

### SECTION III

#### **IT IS MUTALLY UNDERSTOOD AND AGREED:**

1. The terms and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
2. This AGREEMENT constitutes the entire agreement between CITY and DISTRICT and supersedes all prior understandings and agreements, if any, between the parties with respect to the subjects hereof. The AGREEMENT may only be modified in a writing specifically referencing the AGREEMENT and signed by both parties hereto.
3. If any part of this AGREEMENT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of the AGREEMENT shall be given effect to the fullest extent reasonably possible.
4. The parties represent and warrant that this AGREEMENT has been duly authorized and executed and constitute the legally binding obligation of their respective entity enforceable in accordance with its terms. This AGREEMENT may be executed in three counterparts, and each counterpart shall be deemed to be an original.
5. All notices or other communication provided for herein shall be in writing and shall be personally served or delivered by United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

Moulton Niguel Water District  
Ms. Joone Lopez, General Manager  
27500 La Paz Road  
Laguna Niguel, CA 92677  
[jlopez@mnwd.com](mailto:jlopez@mnwd.com)  
with a copy to: Director of Engineering and Operation  
(same address above)

City of Laguna Niguel  
Mr. Rodney Foster, City Manager  
30111 Crown Valley Parkway  
Laguna Niguel, CA 92677

Either party may, by notice to the other party, designate a different address for notices which shall be substituted for that specified above. Any notice given as provided in this paragraph shall be



deemed to have been received, if personally served, as of the date and time of service, or if deposited in the mail as provided above, forty-eight (48) hours after deposit in the mail.

6. This AGREEMENT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret the AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

7. DISTRICT may terminate this AGREEMENT at any time with ten (10) days prior written notice to CITY, provided DISTRICT shall remain responsible for all costs incurred by CITY for the INFRASTRUCTURE RETROFITS construction work incurred prior to the termination and not otherwise paid by DISTRICT as agreed herein and subject to all limitations herein, and DISTRICT shall further be and remain responsible for any such future INFRASTRUCTURE RETROFITS costs arising after such termination that cannot otherwise be mitigated under the terms of the contract with CONTRACTOR, subject to all limitations hereunder. Any notice of termination hereunder by either party shall be in writing and shall state the date upon which such termination is effective. Notice shall be served as provided in paragraph 5 above.

8. Additional Termination:

- a. In the event PROJECT construction (as outlined above), is not initiated within two (2) years of the Effective Date of this AGREEMENT, this AGREEMENT will automatically terminate unless extended in writing by mutual agreement of the parties.
- b. In the event CITY is unable to proceed with the PROJECT or the INFRASTRUCTURE RETROFITS in accordance with the terms and conditions of this AGREEMENT, and prior to DISTRICT incurring any costs for the INFRASTRUCTURE RETROFITS, CITY may terminate this AGREEMENT, with or without cause, upon delivery of thirty (30) days written notice to DISTRICT.
- c. Notice of termination shall be in writing and shall state the date upon which such is effective. Notice shall be served as provided in paragraph 5 above.

9. This AGREEMENT is by and between DISTRICT and CITY and is not intended and shall not be construed so as to create, as between DISTRICT and CITY any agency, servant, employee, partnership, joint venture, association, joint powers, or other relationship between the DISTRICT and CITY.

10. The failure of DISTRICT or CITY to insist upon strict performance of any of the covenants or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy the DISTRICT or CITY may have, and shall not be deemed a waiver of any right to require strict performance of all the terms, covenants and conditions of the AGREEMENT thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this AGREEMENT.

## #6.

11. Attorney's Fees. In the event of any litigation or arbitration or dispute resolution process between the parties regarding this Agreement, the prevailing party shall be entitled to the payment by the losing party of its reasonable attorneys' fees, court costs and litigation expenses, as determined by the court or arbitrator.

12. The parties agree the Recitals are true and correct, and the terms and conditions of the Recitals are a part of this AGREEMENT. The Exhibits referenced in this AGREEMENT and attached to this AGREEMENT, are made a part hereof, as follows:

**EXHIBIT A:** Depiction of INFRASTRUCTURE RETROFITS

**EXHIBIT B:** Form of Recycled Water Service Dedication

[Remainder of this page blank.]

**IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT to be executed by their duly authorized representatives on the date written above,

**MOULTON NIGUEL WATER DISTRICT**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Joone Lopez, General Manager

APPROVED AS TO FORM:  
BOWIE, ARNESON, WILES & GIANNONE  
Legal Counsel, Moulton Water District

By: \_\_\_\_\_  
Patricia B. Giannone

**CITY OF LAGUNA NIGUEL**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Rodney Foster, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Terry E. Dixon, City Attorney

By: \_\_\_\_\_  
Pam Lawrence, Acting City Clerk

**#6.**

**EXHIBIT A**

**INFRASTRUCTURE RETROFITS**

**EXHIBIT B**

**FORM OF  
DEDICATION OF INFRASTRUCTURE RETROFITS**



**DEDICATION OF FACILITIES**

**TO**

**MOULTON NIGUEL WATER DISTRICT:**

**RECYCLED WATER SERVICES AND RELATED FACILITIES**

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned Owner/Seller does hereby transfer and convey to the Moulton Niguel Water District (District), a local public agency organized and operating pursuant to Division 13 of the California Water Code, all rights, title and interest in and to all of the recycled water services and related facilities located in the property describe below (“facilities”). The undersigned Owner/Seller (1) warrants that said property and facilities against defects in materials and workmanship for a period of one (1) year after the date the Certificate of Acceptance is executed by the Moulton Niguel Water district representatives, below. The undersigned Owner/Seller agrees the facilities will be constructed to full compliance with the plans and specification related thereto and specified under the “AGREEMENT BETWEEN CITY OF LAGUNA NIGUEL AND MOULTON NIGUEL WATER DISTRICT FOR INSTALLATION OF RECYCLED WATER METERS AND RECYCLED WATER INFRASTRUCTURE IN CONJUNCTION WITH CONSTRUCTION OF THE RUNOFF ELIMINATION PROGRAM FOR CROWN VALLEY PARKWAY MEDIANS,” dated \_\_\_\_\_, 2014 (“AGREEMENT”). If during said one (1) year period the facilities or portion thereof are found not to be in conformance with any provision of said plans and specifications, it shall further be the undersigned Owner/Seller’s responsibility to pay for all repairs to the facilities required within said one (1) year period which are due to defects in materials or workmanship. This warranty/guarantee is in addition to any and all other warranties, express or implied, with respect to the facilities.

Said property and facilities are described as follows:

**Those certain recycled water services and related facilities as shown in District Standard Drawings for Construction of Domestic Water, Sewer and Recycled Water Facilities W-3 constructed by City of Laguna Niguel relative to the Runoff Elimination Program for Crown Valley Parkway Medians as described on Exhibit ‘A’. Said Exhibit is attached hereto and made a part hereof.**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Owner/Seller: City of Laguna Niguel

By: \_\_\_\_\_  
Name Title

By: \_\_\_\_\_  
Name Title

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in the property of recycled water services and related facilities constructed by City of Laguna Niguel relative to the Runoff Elimination Program for Crown Valley Parkway Medians conveyed for public purposes by this document is hereby accepted by the undersigned duly appointed agents of the Moulton Niguel Water District on behalf of the Moulton Niguel Water District pursuant to the authority conferred upon them by action of the Board of Directors of Moulton Niguel Water District approving the Agreement on \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Dated: \_\_\_\_\_

Moulton Niguel Water District

By: \_\_\_\_\_  
General Manager

By: \_\_\_\_\_  
Secretary





# Moulton Niguel Water District

## STAFF REPORT

**TO:** Board of Directors **MEETING DATE:** April 14, 2014

**FROM:** Marc Serna, Director of Engineering/Operations  
 Brad Bruington, Superintendent of Utilities Maintenance  
 Megan Geer, Contracts and Procurement Manager

**SUBJECT:** On-Call Asphalt and Concrete Repair Services for Fiscal Years 2014/15 and 2015/16

### SUMMARY

Issue: The District utilizes contract services to provide asphalt and concrete restoration for miscellaneous infrastructure repairs completed by District staff. Staff issued a Request for Proposals (RFP) for Asphalt and Concrete Repair Construction Services for the 2014/15 Fiscal Year with an option to extend services through the 2015/16 Fiscal Year.

Recommendation: It is recommended that the Board of Directors authorize the General Manager to execute a contract with Ben’s Asphalt for a not-to-exceed amount of \$550,000 to perform the subject services during the 2014/15 Fiscal Year and an amendment to extend the contract for an additional year at a not-to-exceed amount of \$550,000 for the 2015/16 Fiscal Year.

Fiscal Impact: Sufficient funds have been requested in the 2014/15 and 2015/16 Fiscal Year Budget to cover the contract value for miscellaneous asphalt and concrete repair services.

### BACKGROUND:

Following excavation for each service line, hydrant, or other line repairs by the District’s Street Crew or other contractors working on behalf of the District, city streets and concrete curbs/sidewalks need to be repaired or replaced per city

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standard specifications and requirements. District staff is unable to perform the surface repairs with the District's resources and has historically contracted those services to an outside contractor. The volume of work required by the outside contractor depends on the number of repairs completed by District staff as a result of infrastructure failures or distribution system leaks. Expenditures for asphalt and construction repairs are budgeted based on past services and projected work required for each fiscal year. Expenditures have increased significantly over the past three years as a result of extensive service line repairs, hydrant repairs, and other line repairs by the District's Street Crew. The following is a summary of the asphalt and concrete construction expenditures over the past three fiscal years.

<b>Asphalt and Concrete Expenditures by FY</b>		
<b>FY 11/12</b>	<b>FY 12/13</b>	<b>FY 13/14</b>
\$423,370	\$439,500	\$600,000 (approx.)

### **DISCUSSION:**

Staff issued a RFP to eight contractors and received proposals from three contractors that are capable of providing the desired scope of services on an on-call basis. The respondents are listed in the table below. The RFP requested unit prices and total amount for a sample quantity of work to be completed. The proposals were priced as follows:

<b>Summary of Proposals for Asphalt and Concrete Repair Services</b>	
<b>Contractor</b>	<b>Proposal Fee</b>
Ben's Asphalt, Inc.	\$169,000
Sanders Paving, Inc.	\$200,320
Preferred Paving Co. Inc.	\$932,125

Based on their pricing and references, staff is recommending the District enter into a contract with Ben's Asphalt for a not-to-exceed amount of \$550,000 during the 2014/15 Fiscal Year with an amendment to extend the contract for an additional not-to-exceed amount of \$550,000 for the 2015/16 Fiscal Year. The contract is attached for reference and includes the standard ten day termination clause.

Attachment: On-Call Service Agreement – Asphalt and Concrete Repair

**ON-CALL SERVICE AGREEMENT**

**MOULTON NIGUEL WATER DISTRICT  
ASPHALT AND CONCRETE REPAIR SERVICES  
(Fiscal Year 2014-15 and 2015-16)  
Agreement No. OM12-13.016**

This ON-CALL SERVICES AGREEMENT (the “Agreement”) is approved and entered into this \_\_\_\_ day of April, 2014, by and between the MOULTON NIGUEL WATER DISTRICT, hereinafter called “District”, and Ben’s Asphalt, Inc., hereinafter called “Contractor”. District and Contractor are sometimes referred to in this Agreement individually as a “party” or jointly as the “parties.”

**RECITALS**

- A. District requires individual asphalt and concrete repair projects to be performed in certain areas throughout the District on an on-call basis, as needed, during the fiscal year 2014-15 with an option to extend the Agreement through fiscal year 2015-16. This Agreement, as well as each Work Order issued pursuant to Section 1, establish the terms and procedures that will apply to this Work.
- B. Contractor has submitted a cost proposal and schedule of work items to District asphalt and concrete repair projects, and Contractor is willing to provide the services in accordance with that proposal.
- C. The objective of this Agreement is for District to authorize Contractor to provide services/work on an on-call basis related to asphalt and concrete repair projects.

**NOW, THEREFORE,** District and Contractor for the consideration stated herein agree as follows:

1. **SCOPE OF SERVICES; PRICE; PERFORMANCE STANDARDS.**

- a. Contractor shall perform the asphalt and concrete repair services (the “Work”) in accordance with the general scope of work, repair standards and added general terms set forth in attached **Exhibit 1** (“construction standards”) and the other terms of this Agreement from time to time as directed by District pursuant to a work order for specific repair work during the contract term (“Work Order”).
- b. As the need for services/work arises, as determined by District, District’s representative may issue Contractor a written Work Order indicating: (a) Contractor’s availability to perform the services/work; (b) the not-to-exceed price to perform the services/work requested in accordance with the rate schedule (“Rate Schedule”) shown in **Exhibit 2** hereto and incorporated herein by this reference; and (c) the estimated time for performance of the services/work. A Notice to Proceed (“NTP”) will be issued by District to Contractor, following the acceptance of the Work Order as set forth in **Exhibit 3** by Contractor’s authorized representative in writing.
- c. For emergency services/work, as determined by District, circumstances may not allow time

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to perform the Work Order process described above. In such cases, a District representative will contact Contractor and request that Contractor perform emergency services/work on a time and materials basis in accordance with the Rate Schedule in Exhibit 2 and the terms and conditions of this Agreement, followed by the later issuance of the corresponding Work Order for performance.

d. Contractor's Rate Schedule includes all labor, supervision, materials, equipment, supplies, tools, incidentals, taxes, profit, overhead, bonding and insurance necessary to mobilize, complete the services/work, demobilize and provide cleanup and restoration of construction and work sites.

e. Contractor acknowledges and agrees that District does not guarantee any minimum or maximum amount of Work, and District may use other contractors for the Work, in its sole discretion. This Agreement, including all attached Exhibits, as well as the terms and conditions of any municipal permits or licenses issued or applicable in connection with the Work, if any, form the Agreement between the parties. Contractor shall provide all labor, materials, tools, equipment, supplies, utilities and transportation services required to perform the Work, subject to compliance with the Agreement requirements, and complete all Work in a thorough, professional and workmanlike manner, and in accordance with generally accepted industry standards, to the satisfaction of District.

f. The Work shall be done in accordance with the construction standards, the Work Order issued for each individual repair project during the term of this Agreement, and the permitting or other requirements of any governmental entity within whose jurisdiction the Work is performed, which are by this reference incorporated into this Agreement. It shall be the Contractor's responsibility to ascertain and keep informed of all such existing and future requirements of other governmental entities concerning the Work performed under this Agreement, including acquisition of necessary permits and licenses by municipalities related to repair work in public right of way and payment of the fees or costs thereof.

## 2. PUBLIC SAFETY.

a. Contractor shall be solely and completely responsible for conditions of the Work sites, including safety of all persons and property during performance of the Work. Contractor's operations for the Work shall be conducted so as to provide maximum safety to Contractor's employees, to the general public and District's representatives, and in compliance with all safety laws, rules and regulations of the State of California ("State"), federal, and local agencies. It is Contractor's responsibility to have a current safety program on file with District prior to commencement of any Work under this Agreement.

b. Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public, and shall have under construction no greater length or amount of work that it can prosecute properly with due regard to the rights of the public. Convenient access to driveways, houses and buildings along the line of the Work shall be maintained and temporary crossings shall be provided and maintained in good condition. Not more than one crossing or intersecting street or road shall be closed at any one time. Contractor shall provide and maintain such fences, barriers, directional signs, lights and flagmen as are necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of the Work and to give directions to the public. Contractor shall comply with all terms of any permits issued by public agencies for the Work.

3. COMPLIANCE WITH LAW, LICENSE; STATUS.

a. Contractor shall at all times observe and comply with, and cause its agents, employees and representatives to observe and comply with, all State, federal, and local existing and future laws, rules, regulations and orders in the performance of the Work or this Agreement, including any permits issued for the Work. Contractor shall maintain and keep current all required licenses applicable to the performance of the Work issued by the applicable governing agency during the term of this Agreement. A current copy of any required licenses will be kept on file by District.

b. It is expressly understood that Contractor is an independent contractor and not an employee or agent of District. No permitted or required approval of District's representatives of costs, schedules, documents, or services of Contractor, or investigations thereof, will be construed as making District responsible for the manner in which Contractor performs the Work. Such approvals and investigations are intended only to give District the right to satisfy itself with the quality of work performed by Contractor. Contractor warrants that it will not represent, at any time or in any manner, that Contractor is an employee or agent of District. Contractor shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of District. Contractor shall be solely responsible for the payment of all federal, state and local income tax, social security tax, Workers' Compensation insurance, state disability insurance, and any other taxes or insurance Contractor, as an independent contractor, is responsible for paying under federal, state or local law. Contractor is thus not eligible to receive workers' compensation, medical, indemnity or retirement benefits, including but not limited to enrollment in CalPERS.

4. TIME FOR COMPLETION.

Each Work Order shall be completed in an expeditious manner from the date the Work Order and NTP is issued to Contractor, and in any event no later than the completion date listed on the Work Order. Time is of the essence in the performance and completion of the Work. Performance of any Work must be coordinated with District and local municipality to ensure minimal disruption both to the public use of right of way and to the operation of District's facilities.

5. DISTRICT OBSERVATION.

Contractor's performance of Work is subject to observation by District's representatives and inspection by local municipalities. The observation, if any, by the District's representative of the Work shall not relieve Contractor of any of obligations under the Agreement as prescribed, or Contractor's obligations to perform the Work in accordance with all terms and provisions required by municipal permits and municipal inspection standards. District shall require written evidence of municipal inspection and approval prior to District's acceptance and payment for Work under each Work Order.

6. AGREEMENT PRICE; PAYMENT; TERM.

a. MNWD agrees to compensate Contractor for Work under any Work Order at the corresponding "unit prices" in the schedule of work items attached as Exhibit 3, which establishes unit prices for components of the repair work listed under "description" in the schedule. There shall be no increase to the unit prices if an adjustment to the number of Contractor's staff or service hours is needed to meet the Contract requirements for any Work Order; provided, (i) if any repair work is outside the scope

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of work listed under “description” in the schedule of work items, or (ii) if the Contractor produces written confirmation, satisfactory to District, that the price of asphalt has increased by greater than 15% from the effective date of the Contract, then District and Contractor shall utilize the unit prices listed in the schedule of work items as the basis for any adjustment of compensation for such repair work. The total compensation paid for Work pursuant to separate Work Orders during the Contract term cannot exceed **Five Hundred Fifty Thousand Dollars (\$550,000.00)** (“Contract Maximum Amount”). The Contractor is responsible for and shall pay all sales, consumer, use, and other taxes.

b. Payments under a Work Order will be made based on submittal of invoices by Contractor, including sufficient detail on work items under the Contract pricing. Contractor's invoice will account for the location of the Work performed in addition to sufficient cost details as required by District. Subject to District's “final acceptance” of repair work under a Work Order, District will make payment to the Contractor within thirty (30) calendar days of receipt and approval of a Work Order invoice by District, provided District may withhold amounts as necessary to satisfy properly filed claims for labor or material; estimated actual costs for correcting defective work; and amounts claimed by District as forfeiture due to delay or offsets. “Final acceptance” shall be defined as the formal action by District accepting the repair work under a Work Order as being complete, as evidenced by District's executed acceptance on the Work Order form. No certificate given or payment made under the Contract shall be conclusive evidence of performance of the Contract and no payment shall be an acceptance of any defective work or improper materials.

c. Invoices will include the date or period of Work, the number of hours worked by various labor categories, the hourly billing rate per individual, a complete description of the Work performed, the total amount due and, when requested by MNWD, any support documentation sufficient to validate the charges for each invoice item. Only one bill per month shall be submitted by Contractor, showing amounts due for Contractor and each subcontractor utilized during the monthly billing period. Incomplete invoices will be returned unpaid to Contractor. Each Work Order shall be billed on a separate invoice.

d. District may withhold from each payment an amount equal to five percent (5%) of such payment amount (“Retention”) as security for adequate performance for work exceeding five thousand dollars (\$5,000) in cost. Notwithstanding the foregoing, after the Work is at least fifty percent (50%) complete, if the District's Director of Engineering and Operations determines that the Work is satisfactorily progressing, District, in its sole discretion, may pay some or all of the remaining payments in full to the Contractor.

e. Acceptance and payment by District for the Work will not in any way relieve Contractor of its responsibility to perform the Work and the Agreement in strict accordance with State, Federal, and local law. Neither District's acceptance of, nor payment for, any Work will be construed to operate as a waiver of any rights under the Agreement, or of any cause of action arising out of the performance of the Agreement.

f. Summary of Public Contract Code Section 20104.50. If a local public agency fails to pay an undisputed and properly submitted payment request within thirty (30) days, the agency must pay interest at the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. Each agency must review payment requests as soon as practicable to determine if they are proper and suitable for payment. If a payment request is not proper, the agency must return it to the contractor within

seven (7) days, specifying in writing the reasons why it is not proper. If the agency returns an improper payment request to the contractor more than seven (7) days after receipt, the number of days available to the agency to make payments without incurring interest will be reduced by the number of days by which the agency exceeds the seven (7)-day return requirement.

g. The term of the Agreement is from \_\_\_\_\_, **2014, to and including June 30, 2015** (“expiration”), unless otherwise terminated earlier by either party pursuant to Section 14. This Agreement may be extended, at District’s option, for an additional year to June 30, 2016, at the prices in the Rate Schedule listed in **Exhibit 2**. Subject to the District’s sole discretion, an extension will be based upon a satisfactory review of Contractor’s performance, District’s needs, and appropriation of funds and approval by the District Board of Directors. The parties will prepare a written amendment indicating the effective date and length of the extended Agreement.

7. **PUBLIC LAW REQUIREMENTS; PREVAILING WAGE.**

District is a public agency in the State and is subject to the provisions of law relating to public contracts. It is agreed that all provisions of law applicable to public contracts are a part of this Agreement to the same extent as though set forth herein. Contractor represents and warrants that it is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 1600, *et seq.*, (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “Public Works” and “Maintenance” projects, and will be comply with the Prevailing Wage Laws, including but not limited to the payment of prevailing wages, and in accordance with the terms of **Exhibit 4** to this Agreement. District shall provide Contractor with a copy of the prevailing rates of per diem wages in effect prior to the commencement of work under this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Work available to interested parties upon request, and shall post copies at the Contractor’s principal place of business and the work sites.

8. **CONTRACT DOCUMENTS.** The Contract includes all of the Contract documents as follows: the construction standards; this Agreement; all exhibits to the foregoing documents; and, the executed Work Orders.

9. **NO SUBCONTRACTORS.** Contractor agrees and represents that none of the Work will be subcontracted, and that Contractor will perform all Work. It is agreed and acknowledged that should Contractor fail to conform hereto or with any of the requirements of Section 4100 *et seq.* of the Public Contract Code, Contractor shall be subject to the applicable statutory penalties, and to the requirements of Labor Code Sections 1777.1 or 1777.7 relating to payment of wages to ineligible subcontractors’ employees, and the corresponding return of all subcontracting payments to District.

10. **PAYMENT BOND.** Before commencing performance of the Work contracted for hereunder, Contractor shall furnish a payment bond approved by District as required by Section 9550 of the Civil Code in the amount not less than 100% of the contract maximum amount from a single surety licensed and admitted in the State with an agent for service of process in California and acceptable to District. Contractor shall pay the cost of obtaining the payment bond and Contractor shall use District’s forms for the payment bond, which is attached as **Exhibit 5**.

11. INSURANCE

a. In addition to the requirements set forth herein, during the entire term of the Agreement, Contractor will pay for and maintain, in full force and effect, all insurance required by District as listed in this Section 11. Contractor shall not commence Work under the Agreement until it has obtained all insurance required by the Agreement. Two (2) sets of originally executed certificates of insurance and all required endorsements evidencing the required coverage detailed in this Section 11 shall be provided by Contractor with the Contractor's executed copy of this Agreement, and prior to commencement of any Work.

b. The general liability and business automobile insurance will be comprehensive in form, and extend through the term of this Agreement and on a 'per occurrence' basis. All policies will have a clause providing that thirty (30) calendar days written notice will be given to District prior to any cancellation of such policies. All insurance will be issued and underwritten by insurance companies having at least an "A-" policyholder's rating and a financial rating not less than Class VII in accordance with the most current Best's Rating Guide - Property/Casualty, or better, or as otherwise approved by District. Contractor may satisfy the limit requirements set forth below in a single policy or multiple policies, provided, however, that any such additional policies written as excess insurance will not provide any less coverage than that provided by Contractor's first or primary policy. *All policies shall name Moulton Niguel Water District, City of Aliso Viejo, City of Dana Point, City of Laguna Hills, City of Laguna Niguel, City of Mission Viejo, and each of their directors, elected officials, officers, employees and agents, and any other public entities issuing permits for entry in public right of way to perform the Work, and owners of record of all property on which entry will be made to perform the Work as additional insureds thereunder ("Additional Insureds").* All of the policies of insurance provided hereunder shall be primary insurance and not contribute with any other insurance maintained by the Additional Insureds, and the insurer shall waive all rights of subrogation and contribution it may have against the Additional Insureds; these requirements shall be set forth in endorsements to policies. In the event any of said policies of insurance are canceled, Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 11 to District.

c. In the event District consents, and Contractor subcontracts any portion of the Work under the Agreement, the Agreement between Contractor and such subcontractor shall require the subcontractor to maintain the same policies, limits and terms of insurance that Contractor is required to maintain pursuant to this Section, in accordance with all of the requirements of this Section.

d. Contractor shall take out and maintain at all times during the Agreement the following policies of insurance, which shall comply with the other terms of Section 11 as well as the following:

- (i) Workers Compensation Insurance and Employers Liability Insurance. Worker's compensation insurance as required by State laws, and employer's liability insurance with limits not less than \$1,000,000 each accident and \$1,000,000 for disease per employs, **which will include the subrogation and additional insured terms and endorsements described under subsection (c) above.** This insurance shall be in strict accordance with the requirements of the most current and applicable state Workers' Compensation insurance laws. In accordance with Labor Code Sections 1860 and 1861, concurrent with execution and delivery of the Agreement, Provider



shall execute and deliver to District the certification form attached to this Agreement as **Exhibit 6** whereby Provider acknowledges its responsibility to secure workers' compensation insurance in conformance with the requirements of Labor Code Section 3700, et seq.

- (ii) Commercial General Liability Insurance. Commercial general liability in a combined limit of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate with such aggregate to apply separately to the Work. Commercial General Liability insurance coverage shall be equivalent to Insurance Services Office Form CG 00 01. Included in such insurance shall be contractual coverage sufficiently broad to insure the matters set forth in Section 12 of this Agreement, **as well as the subrogation, primary insurance/non-contribution and Additional Insureds terms and endorsements described under subsection (c) above.** This insurance shall name the Additional Insureds using ISO endorsement CG 20 10 11 85, or both CG 20 10 and CG 23 37 forms if later revisions are used.
  
- (iii) Business Automobile Insurance. Business automobile insurance with liability limits of not less than \$1,000,000 each accident. The policy shall include coverage for owned, non-owned, and hired vehicles, **and include the subrogation, primary insurance/non-contribution and Additional Insureds terms and endorsements described under subsection (c) above.**

e. Nothing in the insurance requirements set forth in this Agreement is to be construed as limiting the liability of Contractor or Contractor's insurers or sureties. Contractor agrees that the provisions of this Section 11 shall not be construed as limiting in any way the extent to which Contractor may be held responsible for the payment of damages or other costs to District, or any persons or property, resulting from Contractor's activities or the activities of any person or persons for which Contractor is otherwise responsible, including Contractor's subcontractors, if any.

12. INDEMNIFICATION.

a. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend District, City of Aliso Viejo, City of Dana Point, City of Laguna Hills, City of Laguna Niguel, City of Mission Viejo, and their directors, elected officials, officers, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, in connection with, or resulting from, or alleged to have arisen out of or resulted from the performance of the Work hereunder, provided that any such claim, damage, losses and expenses are: (a) attributable to bodily or personal injury, sickness, disease and death, or for damage to, or loss or destruction of property including the loss of use resulting therefrom; and (b) caused or alleged to have been caused by any negligent or willful act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder (except for the sole negligence or willful misconduct of such indemnified party); or (c) due to failure, neglect or refusal of the Contractor to faithfully perform the Work and any of the Contractor's obligations under the Agreement. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person indemnified in this Section 12.

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b. In any and all claims against the indemnified parties by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor, or any subcontractor, or other person under workers' compensation acts, disability benefit acts, or other employee acts.

c. This indemnity obligation shall survive the termination or expiration of the Agreement and the completion of the Work hereunder.

### 13. WARRANTY.

a. Contractor shall and hereby does warranty all Work, including materials and installation, for a period of six (6) months from the District's *final acceptance (see Section 6 (b) for definition)* of the Work under this agreement ("Warranty Period"), and shall repair and replace any and all Work, together with any other work which may be displaced in so doing, that may prove defective in workmanship and/or materials, or that does not meet the requirements set forth in any applicable specifications, within the Warranty Period, without expense whatsoever to District and with ordinary wear and tear and unusual abuse or neglect excepted. In the event of Contractor's failure to comply with the above-mentioned conditions within seven (7) days after being notified in writing, District is hereby authorized to proceed to have the defects repaired or replaced and made good at the expense of Contractor who hereby agrees to pay the cost of and charges therefore immediately on demand. If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required by this Section 13. If Contractor cannot be contacted or does not comply with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the provisions of this Section 13, proceed to make such correction or provide such attention, and the costs of such corrections or attention shall be charged against Contractor. Such action by District will not relieve Contractor of the guarantees provided in this Section 13 or elsewhere in the Agreement.

b. This section does not in any way limit the warranty on any items for which a longer warranty is specified or on any items for which Contractor or a manufacturer or supplier gives a warranty for a longer period. The Contractor agrees to furnish District with all appropriate warranty certificates upon completion of the Work. No warranty whether provided for in this Section 13 or elsewhere shall in any way limit the liability of Contractor or its sureties or insurers under the indemnity or insurance provisions of the Agreement. This warranty obligation shall survive the termination or expiration of the Agreement as to all completed Work.

### 14. TERMINATION.

Either party may terminate this Agreement by providing written notice to the other party ten (10) business days in advance of the date of termination; provided, District may terminate the Agreement without any advance notice in the event Contractor is in material breach of any of the terms of this Agreement, as determined by District in its discretion. In the event Contractor terminates this Agreement, Contractor is responsible for the completion of any Work still outstanding in accordance with the terms

of the Agreement. Contractor's indemnity and warranty obligations shall survive the expiration or termination of this Agreement, as well as any outstanding obligations of Contractor at the time of termination. On any termination, Contractor will be entitled to the reasonable value of the Work performed for which it has not received prior compensation under this Agreement, subject to any offset from such payment representing District's damages from any material breach of the terms of the Agreement by Contractor or as otherwise provided for under Section 6. In no event, will Contractor be entitled to receive compensation in excess of the compensation specified under Section 6 of this Agreement. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to District.

15. RECORDS.

Contractor shall preserve and retain any and all records of or related to the Work, including all records of or related to this Agreement and the Work and obligations contained herein, for a period of no less than four (4) years commencing upon final payment to Contractor under the Agreement or, if an examination, review or audit is commenced but not completed within such period, until such examination, review or audit has been completed. Additionally, pursuant to Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy such records during the three (3) year period following final work order and payment to Contractor pursuant to the Agreement. Contractor, upon request, shall make the records of the work available for the purposes described in this Section at all reasonable times during the period Contractor is required to preserve and maintain such records.

16. SUCCESSORS; ASSIGNMENT.

This Agreement is binding on the successors of the parties. This Agreement may not be assigned by Contractor except upon written consent of District.

17. ATTORNEYS' FEES.

In the event of any declaratory or other legal or equitable action instituted between District and Contractor in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party all of its attorneys' fees, and costs and expenses.

18. CLAIMS RESOLUTION.

The provisions set forth in attached **Exhibit 7** shall apply to those claims governed by Public Contract Code Section 20104 *et seq.* arising out of the Agreement.

19. DISTRICT NOTICE OF THIRD-PARTY CLAIM.

In accordance with Public Contract Code Section 9201, District shall timely notify Contractor if District receives any third-party claim relating to the Work or the Contract. District shall be entitled to recover from Contractor District's reasonable costs incurred in providing such notification.

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## 20. NOTICE.

Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person or to an officer or duly authorized representative of the other party or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, and addressed to the party for whom intended, as follows:

If to Contractor: Ben's Asphalt, Inc.  
2200 S. Yale Street  
Santa Ana, CA 92704  
Attn: Jeremy Taylor, Project Manager

If to District: Moulton Niguel Water District  
P.O. Box 30203  
Laguna Niguel, CA 92607-0203  
Attn: Director of Engineering & Operations  
(949) 831-2500

Any notice to Contractor's surety (or any other person) shall be addressed to the addresses provided in the Agreement or such substitute addresses in accordance with the terms provided herein. Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be fully delivered and received 24 hours after mailing as provided above.

## 21. INTEGRATION; ATTACHMENTS.

This Agreement supersedes any and all agreements between the parties hereto which are prior in time to this Agreement. Neither District nor Contractor shall be bound by any understanding, agreement, promise, representation or stipulation expressed or implied not specified herein. The Exhibits attached hereto are incorporated herein as part of this Agreement, and all executed work orders are deemed to form part of the Agreement terms upon execution.

## 22. PARTIAL INVALIDITY.

If any section of this Agreement or provision of the Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or enforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of the Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.

23. AMENDMENTS.

No addition to or modification of any provision contained in the Agreement shall be effective unless fully set forth in a writing signed by both District and Contractor.

24. GOVERNING LAW; VENUE.

The Agreement shall be construed in accordance with and governed by the laws of the State. In the event of any legal action to enforce or interpret the Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure 394.

25. DUE AUTHORITY OF SIGNATORIES; COUNTERPARTS.

Each person signing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the party he or she represents to execute, and thereby bind such party to, this Agreement. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be an original and both of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year written below.

“DISTRICT”: MOULTON NIGUEL WATER DISTRICT

DATE: \_\_\_\_\_ By: \_\_\_\_\_  
Title: General Manager

“CONTRACTOR”: BEN’S ASPHALT, INC.

DATE: \_\_\_\_\_ By: \_\_\_\_\_  
Title: Authorized Officer/Representative\*

\* Complete and attach one of the following: Corporate Certificate executed by Corporate Secretary; or, Notarization of Authorized Officer/Representative signature

*[Signature page for On-Call Maintenance Services Agreement]*

**CORPORATE CERTIFICATE\***

I, \_\_\_\_\_, certify that I am the Secretary of the corporation named as Contractor in the foregoing Agreement; that \_\_\_\_\_, who signed said Agreement on behalf of Contractor, was then President of said corporation; and that said Agreement was duly signed for and on behalf of said corporation by authority of its Governing Body and is within the scope of its corporate powers.

\_\_\_\_\_  
[ \_\_\_\_\_ ], Secretary

*(CORPORATE SEAL)*

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\*To be completed if Contractor is a corporation. If Contractor is a joint venture or partnership that includes a corporation(s), a certificate must be obtained from District's office, completed and attached to this page.

**EXHIBIT 1**

**Scope of Work, Construction Standards**

I. General Terms-

1. Schedule with the District and the affected city within two weeks of issuance of Work Order.
2. Perform repair work to the satisfaction of District representatives and city regulations.
3. Use proper traffic control devices and safety equipment per District and city regulations (see, Section 1- Public Safety for added terms).
4. Remove debris (asphalt, concrete, dirt, etc.) as necessary from Work site.
5. Repair and replace asphalt in different size patches. This includes base paving using ¾” rock asphalt followed by a 2” grind and cap using the city specified final asphalt mix, up to and including rubberized mix. Each site may differ.
6. Repair/replace concrete gutters, curbs and sidewalk panels per District and city specifications.
7. Slurry seal reservoir sites and other District facilities.
8. One (1) year warranty for material and installation.

All construction as part of this contract shall be completed per the District standard specifications and the latest editions of the APWA Standard Specifications for Public Works Construction (“Greenbook”) and the requirements and regulations as determined by the City having authority over the project site.

II. District’s General Provisions [attached]: ***Note- in the event of any conflict between the terms in the Agreement and those Sections of the General Provisions listed below, the Agreement terms shall control.***

- a. Section 4, subdivisions 1, 3-6
- b. Section 5, subdivisions 1, 4, 7-8, 10-13
- c. Section 6, subdivisions 1-2, 5-6
- d. Section 7, subdivisions 1-10,16-18, 23, 25-26
- e. Section 9, subdivisions 4-5

III. Requirements of City with authority over work site.

\*\* In the event any statutory sections cited or referred to in the General Provisions above are updated at the time a work order is executed, all such updates and terms shall be deemed controlling, and are incorporated prospectively by this reference.



**EXHIBIT 2**

**Rate Schedule  
ASPHALT AND CONCRETE REPAIRS**

ITEM NO.	QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	70	ASPHALT REPAIR STANDARD 5 X 5 FEET	\$ _____	\$ _____
2	20	ASPHALT REPAIR STANDARD 10 X 10 FEET	\$ _____	\$ _____
3	5	ASPHALT REPAIR STANDARD 20 X 20 FEET	\$ _____	\$ _____
4	20	ASPHALT REPAIR 36-INCH MANHOLE (APPROX. 1-FOOT WIDE)	\$ _____	\$ _____
5	20	ASPHALT REPAIR WATER VALVE CAN (APPROX. 1-FOOT WIDE)	\$ _____	\$ _____
6	20	STANDARD 10-FOOT CONCRETE SIDEWALK PANEL	\$ _____	\$ _____
7		SLURRY SEAL RESERVOIR SITE 10,000 FT2 - TYPE 1	\$ _____	\$ _____
		GRAND TOTAL PROPOSAL	\$ _____	\$ _____

TOTAL AMOUNT OF PROPOSAL (WRITTEN IN WORDS):

\_\_\_\_\_

Company Name: \_\_\_\_\_

Signature of Bidder: \_\_\_\_\_ Date: \_\_\_\_\_

It is understood that the foregoing quantities are approximates only and are solely for the purpose of facilitating the comparison of proposals and that the Contractor's compensation will be computed upon the basis of the actual quantities in the completed Work whether they be more or less than those shown.

District reserves the right to award the Work to the lowest responsible bidder based on any single schedule or combination of schedules of proposal items deemed by District in its sole discretion to be in District's best interest.

**EXHIBIT 3**

**Work Order Form**

[To be executed by DISTRICT and CONTRACTOR prior to commencement of job; again by DISTRICT for formal acceptance of completed work]

This Work Order is executed pursuant to the “AGREEMENT FOR ON-CALL ASPHALT AND CONCRETE REPAIR SERVICES BETWEEN MOULTON NIGUEL WATER DISTRICT AND \_\_\_\_\_ (Contract No. \_\_\_\_\_)” dated \_\_\_\_\_, 20\_\_ (“Agreement”). The Agreement terms are fully incorporated in this Work Order. Terms used in this Work Order have the same meanings given in the Agreement.

Work Order No.: \_\_\_\_\_

Work Order Scope of Work: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Work Cost: \$ \_\_\_\_\_ [where not-to-exceed quote given]

Work Location: (address/intersection, City)  
\_\_\_\_\_

City Permit No.: \_\_\_\_\_

Time for Completion: \_\_\_\_\_

Notice to Proceed Given: [Date] \_\_\_\_\_

**EXECUTED, ACKNOWLEDGE AND AGREED:**

\_\_\_\_\_  
District’s Representative /Title

\_\_\_\_\_  
Contractor’s Authorized Representative- (print name here)

**II. DISTRICT’S ACCEPTANCE:**

Pursuant to Section 6(b) of the Agreement, District accepts all work completed under this Work Order on the date below, subject to all terms of the Agreement.

\_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT 4****Prevailing Wage Requirements****PREVAILING WAGE**

The Contractor and any of its subcontractors shall comply with Labor Code Section 1775. In accordance with said Section 1775, the Contractor shall forfeit as a penalty to the State or District, not more than \$50.00 for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates as determined by the Labor Commissioner for such work or craft in which such worker is employed for any work done under the Agreement by the Contractor or by any of its subcontractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by the Contractor. District will withhold penalties from Contractor's payments then due upon receipt of notification by the State Department of Industrial Relations divisions.

The specified wage rates are minimum rates only, and District will not consider and shall not be liable for any claims for additional compensation made by the District because of payment by District of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified shall be adjusted by the District at its own expense.

**TRAVEL AND SUBSISTENCE PAYMENTS**

Each worker needed to execute the work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements.

**APPRENTICES**

Attention is directed to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any of its subcontractors.

The Contractor and any of its subcontractors shall comply with the requirements of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Willful violations of Section 1777.5 will result in a forfeiture of not more than \$100.00 for each calendar day of non-compliance which shall be withheld from progress payments by District upon notice from the Department of Industrial Relations. The District or any of its subcontractors that knowingly commits a second or subsequent violation of Section 1777.5 shall forfeit as a civil penalty the sum of not more than \$300.00 for each full calendar day of noncompliance. (Labor Code Section 1777.7.)

**HOURS OF LABOR**

The Contractor shall forfeit as a penalty to the District \$25.00 for each worker employed in the execution of the Agreement by the Contractor or any of its subcontractors for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Section 1810 to Section 1815 thereof, inclusive, except that work performed by employees of Contractor in excess of 8 hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times

# #7.

the basic rate of pay as provided in said Section 1815.

## **PAYROLL RECORDS**

It shall be the responsibility of the Contractor to maintain an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each employee in accordance with Labor Code Section 1776, and to ensure that each subcontractor also complies with all provisions of Labor Code Section 1776 and this Agreement provision.

All payroll records shall be certified as accurate by the applicable Contractor or Contractor or its agent having authority over such matters.

The Contractor shall ensure that all payroll records are available for inspection at the Contractor's principal office during normal business hours and shall notify the District, in writing, of the place where all payroll records are located from time to time.

The Contractor shall furnish a copy of all payroll records, upon request, to employees or their authorized agents, to the District, to the Division of Labor Standards Enforcement, and to the Division of Apprenticeship Standards of the Department of Industrial Relations. The Contractor shall also furnish a copy of payroll records to the general public upon request provided the public request is made through the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement of the Department of Industrial Relations. In no event shall members of the general public be given access to payroll records at the Contractor's principal office.

Records made available to the general public in accordance with the prior paragraph shall be marked or obliterated in such a manner that the name and address of the Contractor and/or Contractor and the name, address, and telephone number of all employees does not appear on the modified record.

The Contractor shall file a certified copy of any requested payroll records with the entity that requested such records within ten days of the date a written request for payroll records has been received.

Failure of the Contractor to comply with any provision of this article or Labor Code Section 1776 within ten days of the date a written request for compliance is received shall result in a forfeiture of \$25.00 per calendar day or portion thereof, for each worker, until strict compliance is obtained. Upon notification by the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the Department of Industrial Relations, the District shall withhold penalties under this article or Labor Code Section 1776 from the Contractor's payments then due.

## **COPY OF PREVAILING WAGE RATES**

The District shall post a copy of the general prevailing rate of per diem wages at the job site pursuant to Section 1773.2 of the California Labor Code. Copies of the prevailing rate of per diem wages are on file at District's principal office and shall be made available upon request.

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**\* In the event of any discrepancies between this Exhibit and any of the statutory sections cited above, or any successor provisions thereto, the statutory terms and requirements shall control and are incorporated prospectively by this reference.**

**EXHIBIT 5**  
**Payment Bond**  
**(Owner's Form)**

**EXHIBIT 6**

**MOULTON NIGUEL WATER DISTRICT  
ASPHALT AND CONCRETE REPAIR SERVICES  
(Fiscal Year 2013-14)**

**WORKERS' COMPENSATION DECLARATION**

I hereby affirm under penalty of perjury one of the following declarations:

*(ONE OF THE BOXES BELOW MUST BE CHECKED, AND FORM SIGNED BELOW)*

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the repair work to be performed under this Agreement.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the repair work to be performed under this Agreement. My workers' compensation insurance carrier and policy number are:

Carrier \_\_\_\_\_

Policy Number \_\_\_\_\_

I certify that, in the performance of the repair work on this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

-----  
Date: \_\_\_\_\_

Contractor: \_\_\_\_\_

Authorized Officer/ Representative

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

**EXHIBIT 7****Resolution of Construction Claims\***

This Addendum is intended as a summary of the provisions of Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code (“Claims Resolution Statute”) and is subject to the actual provisions of the Claims Resolution Statute. This Addendum/ the Claims Resolution Statute shall govern the resolution of any claim of \$375,000 or less which may be made by the Contractor hereunder.

As used in this Addendum and the Claims Resolution Statute, “claim” is defined as a separate demand by Contractor for (a) a time extension, (b) payment of money or damages arising from the work, payment for which is not otherwise expressly provided for or Contractor is not otherwise entitled to, or (c) an amount, the payment of which is disputed by District.

Contractor shall make all claims in writing and include the documents necessary to substantiate the claims. Any claim by Contractor which is intended to invoke the procedures under the Claims Resolution Statute shall specify that the claim is being made pursuant to the Claims Resolution Statute. All claims by Contractor must be filed on or before the date of final payment; provided, however, nothing in this Addendum or the Claims Resolution Statute is intended to extend the time limits or supersede notice requirements which may otherwise be provided within the Agreement or the filing of claims by Contractor.

**Claims Less Than \$50,000**

District shall respond in writing within 45 days of receipt of the claim, or District may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims District may have against Contractor. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of District and Contractor. If District requests additional documentation, District’s written response to the claim shall be submitted to Contractor within 15 days after receipt of the additional documentation, or within the same time period as used by Contractor in producing the additional documentation, whichever is greater.

**Claims Over \$50,000 But Less Than \$375,000**

District shall respond in writing within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims District may have against Contractor. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of District and Contractor. If District requests additional documentation, District’s written response to the claim shall be submitted to Contractor within 30 days after receipt of the additional documentation, or within the same time period as used by Contractor in producing the additional information, whichever is greater.

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## Procedure Following District's Response

If Contractor disputes District's written response, or District fails to respond within the time prescribed, Contractor may, by giving written notice to District within 15 days of receipt of District's response (or within 15 days of District's failure to respond), demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such demand, District shall schedule a meet and confer conference within 30 days.

If after the meet and confer conference, any portion of the claim remains in dispute, Contractor may file a claim pursuant to Government Code Section 900 *et seq.*

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**\* In the event of any discrepancies between this Exhibit and the Claims Resolution Statute, the statute shall control.**



Project: El Niguel RW Pipeline Replacement  
 Contract No: 2011.031  
 Contractor : Paulus Engineering Inc.  
 Engineer : Psomas

**EL NIGUEL RW PIPELINE  
REPLACEMENT**

**SCOPE OF WORK :** Remove and Replace approx. 1,300 ft. of 8” Recycled water mainline with 12” Recycled water main.



**DETAILS :**

Fund 07 Replace and Refurbishment  
 Notice To Proceed 02/01/14  
 Est. Completion Date 06/30/14  
 Authorized Expense \$ 475,000  
 Paid To Date \$ 36,000  
 Percent Completed 90%

**NOTES :** Mainline installed and tested, final paving is scheduled for 04/08/14.

El Niguel RW Pipeline Project

Project East Aliso Creek Res. Recirculation Project  
 Contract No: 2011.038  
 Contractor : Crosno  
 Engineer : District Staff

**EAST ALISO CREEK RESERVOIR  
RECIRCULATION PROJECT**

**SCOPE OF WORK :** Install sample ports, man ways, railing and recirculation and injection system.



**DETAILS :**

Fund 07 Replace and Refurbishment  
 Notice To Proceed 05/01/13  
 Est. Completion Date 04/30/14  
 Authorized Expense \$ 141,000  
 Paid To Date \$ 89,019  
 Percent Completed 50%

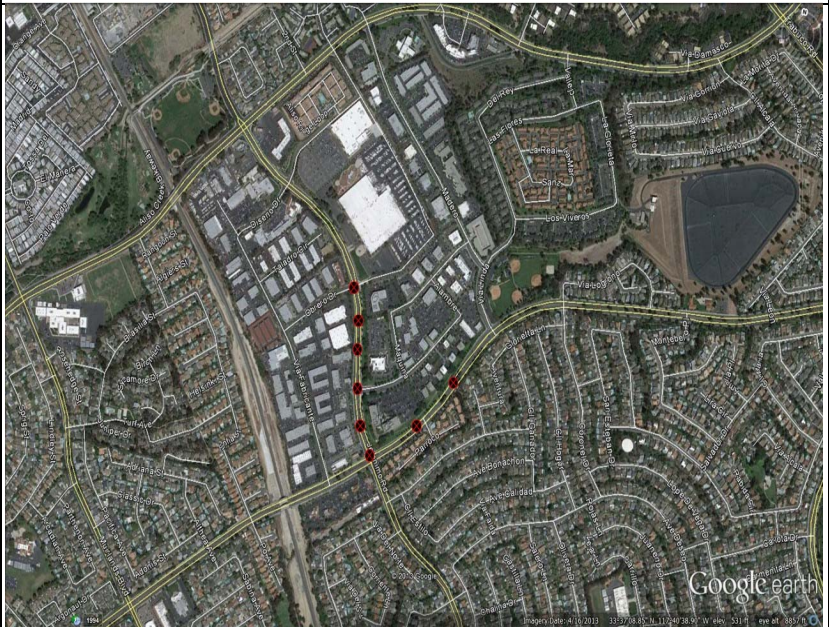
**NOTES :** Structural work to the tank is complete. Replacement of the circulation system is currently scheduled for spring 2014.

East Aliso Creek Reservoir

Project : Manhole Rehabilitation Program FY 12-13  
 Contract No: 2012.004  
 Contractor : Ayala Eng.  
 Engineer : District Staff

**MANHOLE REHABILITATION PROGRAM  
 FY 12-13**

**SCOPE OF WORK :** Continuing rehabilitation work on manholes throughout the district.



**DETAILS :**

Fund 07 Replace and Refurbishment  
 Notice To Proceed 05/01/13  
 Est. Completion Date 05/31/14  
 Authorized Expense \$ 190,925  
 Paid To Date \$ 39,818  
 Percent Completed 90%

**NOTES :** One manhole rehabilitation remains on this project. 24 Manholes have been completed.

Manhole Locations in Mission Viejo Along Jeronimo and Alicia Parkway

Project: KITE HILL PRESSURE REDUCING STATION RELOCATION  
 Contract No: 2010.003  
 Contractor : Paulus Engineering Inc.  
 Engineer : District Staff

**KITE HILL PRESSURE REDUCING  
 STATION RELOCATION**

**SCOPE OF WORK :** Install a new pressure reducing station and approximately 670 lf of new 10" PVC pipeline.



**DETAILS :**

Fund 07 Replace and Refurbishment  
 Notice To Proceed 10/22/13  
 Est. Completion Date 4/30/14  
 Authorized Expense \$ 352,187  
 Paid To Date \$ 252,568  
 Percent Completed 98%

**NOTES :** All work is complete, waiting on Edison to energize electrical meter.

Finished Vault Installation

AS OF 04/02/14

Project: Rehabilitation of Southridge Reservoir  
Contract No: 2013.003  
Contractor : J. Colon Coating  
Engineer : Harper and Associates

**REHABILITATION OF SOUTHRIDGE  
RESERVOIR**

**SCOPE OF WORK :** Recoat interior and exterior



**DETAILS :**

Fund 07 Replace and Refurbishment  
Notice To Proceed 02/20/14  
Est. Completion Date 12/31/14  
Authorized Expense \$ 480,000  
Paid To Date \$ 12,000  
Percent Completed 1%

**NOTES :** Project to start October 1st.

Southridge and Wood Canyon Reservoirs

Project :Rehabilitation of Wood Canyon Reservoir  
Contract No: 2013.011  
Contractor : Advanced Industrial Services  
Engineer : Harper and Associates

**REHABILITATION OF WOOD CANYON  
RESERVOIR**

**SCOPE OF WORK :** Recoat interior and exterior



**DETAILS :**

Fund 07 Replace and Refurbishment  
Notice To Proceed 02/20/14  
Est. Completion Date 12/31/14  
Authorized Expense \$ 715,000  
Paid To Date \$ 12,000  
Percent Completed 1%

**NOTES :** Project to start May 1st.

Wood Canyon and Southridge Reservoir  
Area Map





# Moulton Niguel Water District

## STAFF REPORT

**TO:** Board of Directors **MEETING DATE:** April 14, 2014

**FROM:** Marc Serna, Director of Engineering and Operations  
Eva Plajzer, Assistant Director of Engineering

**SUBJECT:** Quarterly Communications License Program Report

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### SUMMARY:

Issue: The District staff is responsible for administering the Communications License Program per the Communication License Agreement and License Policy adopted by the Board of Directors in March 2012.

Recommendation: This is an information item only.

Fiscal Impact: The Communication License Program is a revenue generating activity that has historically generated up to \$1.5 million per year.

### BACKGROUND:

In the 1990s, the District approved the first communication facility to be constructed at one of the District's sites. As the communication industry grew, the District was repeatedly approached about use of District sites. The District developed the Communications License Program (Program) with a primary objective to provide an economic benefit to the District's ratepayers through a monthly lease program. The District's first responsibility is to provide water and wastewater service to its customers, and development of the Program should not interfere with the District's ability to provide quality service. With those objectives in place, the District's Board of Directors (Board) approved a Communications Lease Agreement and Lease Policy, which was implemented on January 1, 2001, and updated to a Communication License Agreement and License Policy on March 15, 2012. Since that time, the District's Program has grown to include 56 agreements with various amendments on several of those agreements. These communications facilities are distributed among 17 of the District's sites. The Program currently generates about \$1.5 million in revenue for the District each Fiscal Year.

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## DISCUSSION:

During the period covered by this quarterly update (January, February, and March) staff has performed various internal and external activities for the Program:

Program implementation activities:

- Continue to assess internal and external procedures for processing applications and agreements to identify improvements

Program administration activities:

- Five new applications for improvements or lease amendments were received:
  - AT&T - 4
  - T-Mobile - 1
- Application fees received to date for the Fiscal Year 2013/14 are \$6,150
- Expenses for the program for the Fiscal Year 2013/14 to date include:
  - Estimated cost of \$62,456 paid to ATS Communications (ATS) for program support.
  - Approximately 1,100 staff hours for administration, submittal review, inspections, billing, etc.
- Continued processing 28 existing applications; 9 applications were completed during this reporting period
- Continued lease amendment negotiations on Verizon, AT&T, and T-Mobile leases; currently, 12 leases are under amendment negotiations.
- Inspected cell carrier improvements at various sites.
- Continue to work with Sprint and Verizon regarding the damage notices issued for East Aliso Creek Reservoir.
- In anticipation of the rehabilitation of East Aliso Creek Reservoir, notified all carriers at the site that temporary turn-off or removal of their facilities may be required to accommodate construction. Staff is working with the carriers to make sure that District construction can proceed without delays.
- Sprint notified the District that it will cease operating its Nextel network. At this time, Sprint plans to end the leases at five facilities: Seville Reservoir, Crown Valley Reservoir, Bear Brand Reservoir, Rancho Reservoir, and East Aliso Creek Reservoir. ATS has identified a potential lease transfer to AT&T at the Seville site. Staff continues to work with Sprint and ATS to negotiate this transaction. Staff issued notices to Sprint in regards to lease termination.
- Sent out notifications to all cell carriers at all sites to update insurance documents on record at the District.