



# moulton niguel water district

**ENGINEERING & OPERATIONS  
BOARD OF DIRECTORS' MEETING  
MOULTON NIGUEL WATER DISTRICT**

**27500 La Paz Road, Laguna Niguel**

**March 13, 2017**

**8:30 AM**

**Approximate Meeting Time: 2 Hours**

1. CALL MEETING TO ORDER
2. APPROVE THE MINUTES OF THE FEBRUARY 13, 2017 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.*

## **DISCUSSION ITEMS**

4. On-Call Professional Engineering Services Agreements
5. Valve Replacement Material Purchase for Fiscal Year 2016-17
6. Amendment to the On-Call Asphalt and Concrete Repair Services Agreement

## **INFORMATION ITEMS**

7. Recycled Water Master Plan Update
8. Traffic Control Safety Plan
9. Operations Center Consolidation Improvement Project Update
10. Future Agenda Items (Any items added under this section are for discussion at future meetings only)

11. 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**

#### 12. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation and initiation of litigation pursuant to paragraphs (2) and (4) of subdivision (d) of Government Code Section 54956.9

One potential case

#### 13. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section: 54956.8

Property: Real Estate related to City of San Juan Capistrano's Water and Sewer Systems

Agency Negotiator: Joone Lopez - Moulton Niguel Water District

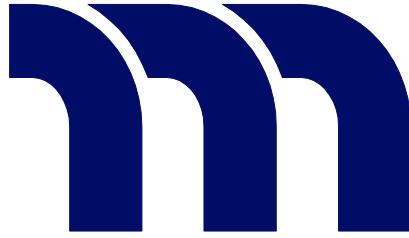
Negotiating Parties: Moulton Niguel Water District and City of San Juan Capistrano

Under Negotiation: Terms for Proposed Acquisition of Property

### **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).



# moulton niguel water district

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## MINUTES OF THE REGULAR MEETING OF THE ENGINEERING & OPERATIONS BOARD OF DIRECTORS OF THE MOULTON NIGUEL WATER DISTRICT

February 13, 2017

A Regular 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 8:30 AM on February 13, 2017. There were present and participating:

### DIRECTORS

Duane Cave	Director
Scott Colton	Vice President/Chair
Richard Fiore	Director
Donald Froelich	President
Gary Kurtz	Director
Larry Lizotte	Director
Brian Probolsky	Vice President (arrived at 8:34 a.m.)

Also present and participating were:

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

Matt Collings	Assistant General Manager
Marc Serna	Director of Engineering & Operations
Drew Atwater	Director of Planning
Jake Vollebregt	Director of Regional & Legal Affairs
Jeff Ferre	Best, Best, & Krieger (General Counsel)
Paige Gulck	Board Secretary
Tim Bonita	Recording Secretary
Johnathan Cruz	MNWD
Todd Dmytryshyn	MNWD
Mark Herron	MNWD
Tracy Ingebrigtsen	MNWD
Steve Merk	MNWD
Todd Novacek	MNWD
Medha Patel	MNWD

## #2.

Lindsey Stuvick	MNWD
Adrian Tasso	MNWD
Alex Thomas	MNWD
Rod Woods	MNWD
Jayson Schmidt	Chandler Asset Management

### 1. CALL MEETING TO ORDER

*The meeting was called to order by Scott Colton at 8:00 a.m.*

### 2. APPROVE THE MINUTES OF THE JANUARY 16, 2017 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

*MOTION DULY MADE BY GARY KURTZ AND SECONDED BY DONALD FROELICH, MINUTES OF THE JANUARY 16, 2017 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, AND LARRY LIZOTTE ALL VOTING 'AYE'. DIRECTOR BRIAN PROBOLSKY WAS ABSENT.*

### 3. PUBLIC COMMENTS

*None.*

### PRESENTATION ITEMS

#### 4. Quarterly Investment Report - Chandler Asset Management

*Brian Probolsky arrived at 8:34 a.m.*

*Jayson Schmidt presented the Quarterly Investment Report. Key topics presented were the account profile and the economic update.*

### DISCUSSION ITEMS

#### 5. Water Shortage Contingency Plan Stage 1 Implementation

*Drew Atwater provided information the item. Staff recommends that the Board of Directors approve the resolution entitled, "Implementing Water Shortage Stage 1." Discussion ensued regarding the details of Stage 1 in the District's Water Shortage Contingency Plan.*

**6. Palms Apartments Waterline Construction Contract Award**

*Rod Woods provided information on the contract. Staff recommends that the Board of Directors award the construction services contract to Kennedy Pipeline Construction in the amount of \$328,030; authorize the General Manager to execute the contract; and authorize the General Manager or designee to approve change orders up to 10% of the contract value. Discussion ensued regarding the contract.*

**7. Mini-Jetter Purchase**

*Todd Novacek provided details on the item. Staff recommends that the Board of Directors approve the purchase of a Mongoose Jetter Model 184XL-TK Truck Mounted High Pressure Sewer Cleaner on an F-550 diesel truck chassis from Plumbers Depot for \$128,945. Discussion ensued regarding the Jetter.*

**8. Bond and Disclosure Counsel Services - Jones Hall**

*Johnathan Cruz provided information on the item. Staff recommends that the Board of Directors authorize the General Manager to execute a three-year Profession Services Agreement with Jones Hall with the option to extend the agreement for two additional one-year terms, for bond and disclosure service. Discussion ensued regarding the details agreement.*

**9. Rebate Application for Turf Removal**

*Lindsey Stuvick provided details on the application. Staff recommends that the Board of Directors consider the rebate application for the identified project without a limitation on the maximum allowable acreage for the project and direct staff accordingly.*

**INFORMATION ITEMS****10. Operations Center Consolidation Improvement Project Update**

*Matt Collings provided an update on the Operations Center Consolidation Improvement Project. The District continues to review and finalize portions of the CEQA document. Staff expects to have a CEQA document ready for public review next month.*

**11. Water Usage Update**

*Lindsey Stuvick presented the Water Usage Update. The District achieved 29% reduction for January 2017.*

**12. Future Agenda Items (Any items added under this section are for discussion at future meetings only)**

*None.*

**13. Late Items (Appropriate Findings to be Made)**

*Staff has none.*

**CLOSED SESSION**

**14. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9

Receipt of claim: LAKEPARK COMMUNITY ASSOCIATION

*Prior to entering closed session, Richard Fiore announced that he would be recusing himself due to a potential conflict of interest in that his law firm may have done work with the Lakepark Community Association. The Board entered closed session at 9:51 p.m. and exited at 9:58 p.m. Jeff Ferre provided the following report.*

*A motion was made by Director Cave, seconded by Director Kurtz, to reject the claim as directed by the District's insurance carrier and to provide the appropriate notice to the claimant.*

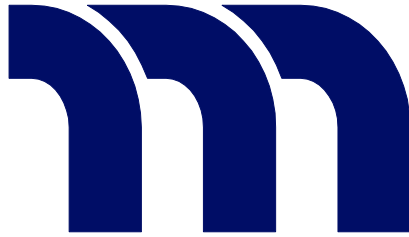
*THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, DONALD FROELICH, GARY KURTZ, LARRY LIZOTTE, AND BRIAN PROBOLSKY ALL VOTING 'AYE'. DIRECTOR RICHARD FIORE WAS ABSENT.*

**ADJOURNMENT**

*The meeting was adjourned at 9:59 a.m.*

Respectfully submitted,

Tim Bonita  
Recording Secretary



**moulton niguel water district**  
**STAFF REPORT**

**TO: Board of Directors                      MEETING DATE: March 13, 2017**

**FROM: Rod Woods, Assistant Director of Engineering**  
**David Larsen, Principal Engineer**

**SUBJECT: On-Call Professional Engineering Services Agreements**

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**SUMMARY:**

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

Recommendation: It is recommended that the Board of Directors approve the Agreements for On-Call Professional Engineering Services with AKM Consulting Engineers, Inc., Dudek, LEE & RO, Inc., and Tetra Tech, each with a total not-to-exceed value of \$1,000,000 and a 3-year contract term; and authorize the General Manager or designee to execute the agreements.

Fiscal Impact: The total combined maximum value of the agreements is \$4,000,000. 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 comprehensive Capital Improvement Program (CIP) over the next 10 years. The CIP requires appropriate engineering resources to assess and plan projects, prepare design and construction documents, and provide engineering services during construction. In addition to the CIP, engineering support is required in other aspects of District operations to provide technical support via operational studies and analyses.

The on-call engineering services agreements allow Staff to issue individual task orders to authorized firms to assist the District in executing the CIP and providing engineering support. Each task order will be funded by a CIP project or dedicated operating budget funds as long as funds are available.

In April 2014, the Board of Directors approved similar on-call engineering services agreements for a 3-year term. The District has utilized these agreements with great

## #4.

### On-Call Professional Engineering Services Agreements

March 13, 2017

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success in the execution of CIP projects. To date, \$2,101,015 has been committed in 69 task orders for various projects under those on-call engineering services agreements.

#### **DISCUSSION:**

The District issued a Request for Proposals (RFP) for On-Call Professional Engineering Services to twenty (20) engineering firms. On January 10, 2017, the District received nine (9) comprehensive proposals. The firms that submitted a proposal were:

- AKM Consulting Engineers
- Civil Source, Inc.
- Dudek
- Hazen and Sawyer
- JIG Consultants
- LEE & RO, Inc.
- Michael Baker
- Psomas
- Tetra Tech

Staff carefully evaluated the proposals based on various factors to identify the best candidates for further consideration in an interview process. The factors that went into the initial screening of the proposals included: 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. Ultimately, Staff concluded that all nine firms met the above qualifications for further consideration.

On January 30 and 31, Staff conducted interviews with each of these firms. Each firm provided a presentation on their firm's qualifications as it relates to the scope of the CIP projects anticipated to be part of the on-call engineering services agreements followed by a series of questions. Each interview was evaluated based on content, quality, timeliness, and organization, along with the firm's ability to understand and meet District needs, demonstrate their technical abilities 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 four firms were selected for recommendation for a professional services agreement with the District:

- AKM Consulting Engineers
- Dudek
- LEE & RO, Inc.
- Tetra Tech

The contractual vehicle that will be used for the on-call engineering services agreements is provided as an attachment. The schedule of anticipated CIP projects within the term of these new on-call engineering services agreements is shown in the attached Appendix B from the RFP. Based on the anticipated CIP work to be implemented, in the attachment, Staff recommends expanding the authorized maximum task order value from \$75,000 to \$150,000. The increased task order will allow staff to more efficiently execute the CIP. Fee proposals will typically be required from at least three of the on-call engineering firms for task orders over



On-Call Professional Engineering Services Agreements

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\$50,000. Task orders under \$50,000 may be awarded directly to a single on-call engineering firm based on the District's needs and knowledge of the firm's capabilities.

Each agreement and task order 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 engineering services agreements will be presented to the Board of Directors with a list of issued and completed task orders.

Attachments: 1) Agreements for On-Call Professional Engineering Services  
2) Preliminary List of Potential CIP Projects (from RFP)



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

**MNWD PROJECT: AS-NEEDED ENGINEERING SERVICES FOR CAPITAL  
IMPROVEMENT PROGRAM IMPLEMENTATION  
CONTRACT NO. OM16-17.051**

THIS AGREEMENT (the "Agreement") is executed and dated as of \_\_\_\_\_, 2017 ("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

## #4.

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 one-hundred fifty thousand dollars (\$150,000), 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. To the fullest extent permitted by law, ENGINEER shall defend (with counsel reasonably approved by the City), indemnify and hold MNWD and its officials, officers, employees, agents and designated volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of ENGINEER, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the ENGINEER'S services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses, including but not limited to legal costs and expenses incurred by the in connection with any Claim or in enforcing the indemnity herein provided. Notwithstanding the foregoing, to the extent ENGINEER'S services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ENGINEER. 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**

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's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

Section 11.2 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 11.3 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 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

## #4.

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.

### **SECTION XII – CALIFORNIA LABOR CODE REQUIREMENTS**

Section 12.1 ENGINEER is aware of the requirements of California Labor Code Sections 1720 et seq and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, ENGINEER agrees to fully comply with such Prevailing Wage Laws, if applicable. ENGINEER shall defend, indemnify and hold MNWD, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the ENGINEER and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

Section 12.2 If the Services are being performed as part of an applicable “public works” or “maintenance” project, in addition to the foregoing, then pursuant to Labor Code Sections 1725.5 and 1771.1, the ENGINEER and all subconsultants must be registered with the Department of Industrial Relations (“DIR”). ENGINEER shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be ENGINEER’s sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

### **SECTION XIII - GENERAL**

Section 13.1 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 13.2 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 13.3 This is a non-exclusive Agreement for the services contemplated herein.

Section 13.4 Books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this Agreement shall be maintained by ENGINEER and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under this Agreement for inspection by MNWD.

Section 13.5 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: Rodney S. Woods  
Assistant Director of Engineering  
Moulton Niguel Water District  
27500 La Paz Road  
Laguna Niguel, CA 92677-3489

To ENGINEER -            Attn:    Name  
                                         Organization  
                                         Address  
                                         City  
                                         Phone

Section 13.6 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 13.7 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 13.8 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 13.9 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

**#4.**

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 13.10 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 13.11 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.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2017 ("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

**#4.**

**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. OM16-17.051)" dated \_\_\_\_\_, 2017 (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: \_\_\_\_\_

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**EXHIBIT D**  
FEE SCHEDULE



**Appendix B**  
**MOULTON NIGUEL WATER DISTRICT**  
Preliminary List of Potential CIP Projects

No.	Project Name	Estimated Project Cost	Engineering Services Breakdown		
			Small <\$75k	\$75k<Med.<\$150k	>\$150k Large
1	RESERVOIR MANAGEMENT SYSTEM REPLACEMENT PROGRAM	\$11,450,000			3 x \$300,000
2	RESERVOIR RECOATING PROGRAM	\$14,220,000	3 x \$50,000		
3	SERVICE SECTION AND MCC REPLACEMENT PROGRAM	\$3,450,700		3 x \$100,000	
4	VALVE REPLACEMENT PROGRAM	\$21,430,000		3 x \$100,000	
5	EASEMENT REHABILITATION PROGRAM - Phase 1	\$7,850,000		6 x \$100,000	
6	EASEMENT REHABILITATION PROGRAM - Phase 2	\$6,000,000		\$100,000	
7	STEEL TANKS SEISMIC & STRUCT RETROFITS	\$5,200,000			3 x \$250,000
8	NORTHERN TRANS IMPROVEMENTS N OF LA PAZ	\$500,000		\$100,000	
9	SECONDARY FEED FOR 1050 ZONE	\$600,000		\$100,000	
10	OLD RANCH ROAD EASEMENT REFURBISHM	\$200,000	\$25,000		
11	CVP 16-INCH PW LINE REHABILITATION	\$650,000		\$90,000	
12	UTILITY SERVICE ENTRANCE REPLACEMENTS	\$883,000			\$180,000
13	MISSION VIEJO HS LINE/VAULT REFURB	\$200,000	\$25,000		
14	PZ450 ALISO CREEK POTABLE LINE RELOCATION	\$300,000	\$50,000		
15	650-ZONE NIGUEL ROAD INTERTIE	\$320,000		\$80,000	
16	BEAR BRAND PS PUMP REPLACEMENT	\$410,000	\$50,000		
17	LITTLE NIGUEL PS PUMP REPLACEMENT	\$250,000	\$40,000		
18	PACIFIC PARK PS PUMP & ENGINE REPLACEMENT	\$600,000		\$80,000	
19	ROLLING HILLS PS ENGINE & PUMP REPLACEMENT	\$675,000		\$80,000	
20	SHEEP HILL PS ENGINE& PUMP REPLACEMENT	\$1,040,000		\$110,000	
21	MARGUERITE/OSO CIP TAKEOUT	\$2,500,000			\$300,000
22	I.D. 1 MASTER METER RELOCATION	\$600,000	\$60,000		
23	SOUTH COUNTY PIPELINE TAKEOUT FACILITY	\$2,200,000			\$280,000
24	RANCHO UNDERGROUND PWPS REFURBISHM	\$250,000	\$25,000		
25	RW EXPANSION PHASE V	\$35,000,000		3 x \$100,000; 3 x \$150,000	
26	OAKGROVE DRIVE RW PIPELINE REPLACEMENT	\$525,000	\$50,000		
27	GALIVAN BYPASS IMPROVEMENTS	\$175,000	\$20,000		
28	LN REG PARK RW VAULT RECONFIGURATION	\$150,000	\$50,000		
29	SEWER LINING PROGRAM	\$2,400,000		3 x \$100,000	
30	LOWER SALADA LS FORCE MAIN REPLACEMENT	\$5,900,000			\$500,000
31	ALISO CREEK LS AUXILIARY GENERATOR REPLACEMENT	\$530,000	\$30,000		
32	SOUTHWING LS AUXILIARY GENERATOR REPLACEMENT	\$580,000	\$30,000		
33	3A OUTFALL LINE VALVES	\$450,000	\$50,000		
34	3A ETM CREEK BANK STABILIZATION	\$2,000,000		\$150,000	
35	3A ETM REPLACEMENT - AVE DE LA VISTA	\$2,475,000			\$225,000
36	3A ETM REPLACEMENT - CAMINO CAPO	\$3,500,000			\$350,000
37	3A ETM SJ CREEK-COUNTY OF ORANGE PHASE VIII	\$900,000		\$120,000	
38	OSO CREEK SEWER PARALLEL PIPELINE	\$1,950,000			\$300,000
39	LS GENERATOR EMERGENCY CONNECTIONS	\$430,000		\$100,000	
	<b>Total</b>	<b>\$138,743,700</b>	<b>\$655,000</b>	<b>\$3,360,000</b>	<b>\$3,785,000</b>
	<b>Project Count</b>	<b>61</b>	<b>16</b>	<b>32</b>	<b>13</b>





# moulton niguel water district

## STAFF REPORT

**TO:** Board of Directors **MEETING DATE:** March 13, 2017

**FROM:** Todd Novacek, Assistant Director of Operations  
David Larsen, Principal Engineer

**SUBJECT:** Valve Replacement Material Purchase for Fiscal Year 2016-17

**DIVISION:** District Wide

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### SUMMARY:

Issue: Board action is required for the purchase of new valves and associated materials for the FY 2016-17 Valve Replacements, Project No. 2016.002.

Recommendation: It is recommended that the Board of Directors authorize the purchase of new valves and associated materials from C. Wells Pipeline Materials, Inc. for an amount of \$200,078.

Fiscal Impact: The budget for the FY 2016-17 Valve Replacements is \$2,860,000. Sufficient funds are available in the FY 2016-17 CIP budget.

### BACKGROUND:

The District has over 20,000 valves with a majority of those valves being over 25 years old. Each year, District staff replaces valves that have been prioritized as part of the system-wide valve replacement program to ensure that they will operate as needed. As part of this valve replacement program, the District has developed a valve program that is primarily dedicated to the following functions:

- Isolation testing of valves
- Valve exercising
- Valve replacement
- New valve installation
- Valve Replacement Program Capital Improvement Program support

The purchase of valves and the associated materials is required for the execution of this work.

## #5.

Valve Replacement Material Purchase for Fiscal Year 2016-17

March 13, 2017

Page 2 of 2

### **DISCUSSION:**

As part of the planned activities for the Fiscal Year 2016-17 Valve Replacement Project, Staff solicited comprehensive unit pricing from material suppliers for the purchase of valves, pipe, fittings and associated materials complying with the District's standard specifications. This purchase will include over 100 valves, ranging in size from 6-inch to 16-inch in diameter. Quotations were received from three (3) suppliers. Utilizing the unit pricing from the suppliers and the quantities developed for the planned work to be performed by the District, the total costs of the materials are summarized below:

	<b>C. Wells Pipeline Materials</b>	<b>Ferguson Waterworks</b>	<b>HD Supply Waterworks</b>
Valve Replacement Materials Required	\$200,078	\$200,365	\$234,054

Staff has determined that the lowest supplier was C. Wells Pipeline Materials, Inc. and is recommending the purchase of new valves and associated materials for an amount of \$200,078. C. Wells Pipeline Materials Inc. is a reputable supplier and has provided materials to the District in the past.



# moulton niguel water district

## STAFF REPORT

**TO:** Board of Directors **MEETING DATE:** March 13, 2017

**FROM:** Todd Novacek, Assistant Director of Operations  
Adrian Tasso, Superintendent of Operations

**SUBJECT:** Amendment to the On-Call Asphalt and Concrete Repair Services Agreement

**DIVISION:** District-wide

### SUMMARY:

Issue: The District is tracking to expend the contracted funds for on-call asphalt and concrete repair services with A & Y Company, Inc. An increase in the existing contract is necessary to cover the anticipated paving costs through the remainder of FY 2016-17 and anticipated FY 2017-18.

Recommendation: It is recommended that the Board of Directors approve Amendment No. 1 to the On-Call Asphalt and Concrete Repair Services Agreement with A & Y Company, Inc. for an amount of \$500,000 for a total contract not-to-exceed value of \$2,000,000; and authorize the General Manager or designee to execute Amendment No. 1.

Fiscal Impact: Sufficient funds are included in the FY 2016-17 budget and will be budgeted in the FY 2017-18 budget.

### BACKGROUND:

Following excavation of service lines, valve replacements, hydrants, or other line repairs by the District's Street Crew or other contractors working on behalf of the District, city streets and concrete curbs and sidewalks must be repaired or replaced per city standard specifications and requirements. Contracting these surface repairs to an outside vendor is a cost-effective approach to completing the required work. Expenditures for asphalt and construction repairs are budgeted based on past services and projected work required for each Fiscal Year.

## #6.

Amendment to the On-Call Asphalt and Concrete Repair Services Agreement

March 13, 2017

Page 2 of 2

In June 2016, the Board of Directors awarded a two-year contract to A & Y Company, Inc. for an annual not-to-exceed value of \$750,000, to perform the subject services during Fiscal Year (FY) 2016-17 and FY 2017-18, for a total not-to-exceed contract value of \$1,500,000. The request for proposals was issued to thirteen contractors, and it was determined that A & Y Company, Inc. provided the overall best value unit pricing.

### **DISCUSSION:**

During this fiscal year, the District has experienced an increased need for paving and concrete repair. This is primarily due to an increase in the number of repairs and several unanticipated projects. Staff projects that an additional \$150,000 will be sufficient funds to cover the remainder of FY 2016-17. However, Staff estimates that an additional \$350,000 will be required to cover FY 2017-18. The requested increase also considers a larger number of internal valve replacements expected to be performed by internal staff.

A & Y Company, Inc. has provided high-quality and reliable service to the District. Their service has been timely and the cities within the District's service area have been satisfied with their work.

Attachment: Amendment No. 1

**AMENDMENT NO. 1 TO THE ON-CALL SERVICE AGREEMENT FOR  
ASPHALT AND CONCRETE REPAIR SERVICES BETWEEN MOULTON NIGUEL  
WATER DISTRICT AND A & Y COMPANY, INC.  
CONTRACT NO. OM16-17.001**

This Amendment No. 1 (this "Amendment") is entered into and effective as of \_\_\_\_\_, amending the On-Call Service Agreement for Asphalt and Concrete Repair Services, dated June 16, 2016 (the "Agreement") by and between Moulton Niguel Water District ("MNWD") and A & Y Company, Inc. ("Consultant") (collectively, the "Parties").

**RECITALS**

A. WHEREAS, on June 16, 2016, the Parties entered into the Agreement for fiscal year 2016-17 through fiscal year 2017-18; and

B. WHEREAS, the Parties desire to amend the Agreement to increase the Agreement Maximum Amount and the contract not-to-exceed amounts for both fiscal year 2016-17 and 2017-18.

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

1. Section 6(a) of the Agreement is hereby revised to state the following:

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 of work listed under "description" in the schedule of work items, or (ii) if the Contractor produces written confirmation, satisfactory to the District, that the price of asphalt has increased by greater than 15% from the effective date of the Contract, then the 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 to Contractor during the term of this Agreement shall not exceed **Two Million Dollars (\$2,000,000)** (the "Agreement Maximum Amount"). Notwithstanding the foregoing, the total compensation paid for Work pursuant to separate Work Orders shall not exceed **Nine Hundred Thousand Dollars (\$900,000)** for fiscal year 2016-17 and **One Million One Hundred Thousand Dollars (\$1,100,000)** for fiscal year 2017-18. The Contractor is responsible for and shall pay all sales, consumer, use, and other taxes.

2. All other provisions of the Agreement, will remain in full force and effect. In the event of any conflict or inconsistency between the Agreement and this Amendment, the terms of this Amendment shall control.

3. The individuals executing this Amendment and the instruments referenced in it on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Amendment.

**#6.**

AMENDMENT NO. 1 TO THE ON-CALL SERVICE AGREEMENT FOR  
ASPHALT AND CONCRETE REPAIR SERVICES BETWEEN MOULTON NIGUEL  
WATER DISTRICT AND A & Y COMPANY, INC.  
CONTRACT NO. OM16-17.001

A & Y COMPANY, INC.

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

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

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

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

MOULTON NIGUEL WATER DISTRICT, a  
California Water District

By: Joone Lopez

\_\_\_\_\_  
General Manager

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