



moulton niguel water district

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

27500 La Paz Road, Laguna Niguel

April 17, 2017

8:30 AM

Approximate Meeting Time: 3 Hours

1. CALL MEETING TO ORDER
2. APPROVE THE MINUTES OF THE MARCH 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.

PRESENTATION ITEMS

4. Recycled Water Master Plan

DISCUSSION ITEMS

5. On-Call Construction Support Services
6. Professional Services Agreement for Paseo de Valencia Lift Station Rehabilitation
7. Fats, Oils, and Grease (FOG) Consulting Services
8. Consulting Services for Communications License Program

INFORMATION ITEMS

9. Mission Hospital 750 Zone Update
10. On-Call Emergency Construction Services Update

11. Operations Center Consolidation Improvement Project Update
12. Quarterly Operations Report
13. Quarterly Capital Improvement Program Report
14. Future Agenda Items (Any items added under this section are for discussion at future meetings only)
15. 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]

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.



moulton niguel water district

DRAFT

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

March 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 March 13, 2017. There were present and participating:

DIRECTORS

Duane Cave	Director (arrived at 8:33 a.m.)
Scott Colton	Vice President/Chair
Richard Fiore	Director
Donald Froelich	President
Gary Kurtz	Director
Larry Lizotte	Director
Brian Probolsky	Vice President (arrived at 8:33 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
Gina Hillary	Director of Human Resources
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
Trevor Agrelius	MNWD
Todd Dmytryshyn	MNWD
Tracy Ingebrigtsen	MNWD
David Larsen	MNWD
Steve Merk	MNWD
Todd Novacek	MNWD

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Medha Patel	MNWD
Adrian Tasso	MNWD
Alex Thomas	MNWD
Rod Woods	MNWD
Zeki Kayiran	AKM Consulting Engineers, Inc.
Doug Chotkevys	Chotkevys Consulting
Bob Ohlund	Dudek
Roger Faubel	Faubel Public Affairs
Rick Liskow	LEE & RO, Inc.
Laurence Esguerra	Tetra Tech

1. CALL MEETING TO ORDER

The meeting was called to order by Scott Colton at 8:31 a.m.

2. APPROVE THE MINUTES OF THE FEBRUARY 13, 2017 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

MOTION DULY MADE BY DONALD FROELICH AND SECONDED BY LARRY LIZOTTE, MINUTES OF THE FEBRUARY 13, 2017 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, AND LARRY LIZOTTE, ALL VOTING 'AYE'. DIRECTORS DUANE CAVE AND BRIAN PROBOLSKY WERE ABSENT.

3. PUBLIC COMMENTS

None.

DISCUSSION ITEMS

4. On-Call Professional Engineering Services Agreements

Duane Cave and Brian Probolsky arrived at 8:33 a.m.

Rod Woods provided information on the on-call engineering agreements. Staff recommends 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. Discussion ensued regarding the agreements.

5. Valve Replacement Material Purchase for Fiscal Year 2016-17

Todd Novacek provided information on the item. Staff recommends 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. Discussion ensued regarding the materials.

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

Todd Novacek provided details on the agreement. Staff recommends 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. Discussion ensued regarding the agreement.

INFORMATION ITEMS

7. Recycled Water Master Plan Update

Rod Woods provided an update on the Recycled Water Master Plan.

8. Traffic Control Safety Plan

Todd Novacek provided a presentation on the traffic control safety plan. Key topics included approaching a job site, the work zone, and parking.

9. Operations Center Consolidation Improvement Project Update

Matt Collings provided an update on the Operations Center Consolidation Improvement Project. The District is in the process of finalizing the CEQA document and should be issuing a notice of intent to adopt a Mitigated Negative Declaration in the next three weeks.

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

None.

11. Late Items (Appropriate Findings to be Made)

Staff has none.

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

The Board entered closed session at 9:56 a.m. and exited at 11:06 a.m. Jeff Ferre stated that there was no reportable action.

ADJOURNMENT

The meeting was adjourned at 11:06 a.m.

Respectfully submitted,

Tim Bonita
Recording Secretary



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** April 17, 2017

FROM: Rod Woods, Assistant Director of Engineering
Steve Merk, Superintendent of Engineering

SUBJECT: On-Call Construction Support Services

DIVISION: District-wide

SUMMARY:

Issue: Board action is required to execute agreements for Construction Support Services on an as-needed basis.

Recommendation: It is recommended that the Board of Directors authorize the General Manager or designee to execute one-year Construction Support Services Agreements with Paulus Engineering, Inc., Shoffeitt Pipeline, Inc., and T.E. Roberts, Inc. for total not-to-exceed agreement amounts of \$150,000 each, with the option to renew for two additional one-year terms.

Fiscal Impact: The fiscal impact will depend on the amount of construction support services required. The agreements will be funded with projects from the Capital Improvement Program and the Operating Budget as needed for construction support services.

Reviewed by Legal: Yes

BACKGROUND:

The majority of service orders are handled by the District's Operations Department. Service orders often involve repairs and replacements of existing District infrastructure when leaks are discovered (e.g. mainlines, service lines, fire hydrant runs, valves, and other appurtenances). Service orders normally involve close coordination with the jurisdictional cities, as the work typically involves traffic control, paving, and other restoration activities.

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On-Call Construction Support Services

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Occasionally, the number of service orders exceeds what the Operations Department is able to handle with current staffing levels. These agreements are intended to secure the services of qualified contractors to assist Operations during times of excessive service orders. In addition, these contractors will be utilized when repair work involves activities not normally performed by District staff (e.g. welding, unusual appurtenances, large infrastructure, etc.). Overall, these contracts will assist staff in responding to repairs that require prompt attention.

DISCUSSION:

The District issued a Request for Proposals for On-Call Construction Support Services to six qualified Contractors. On March 28, 2017, the District received six proposals. The firms that submitted proposals were:

- Ferreira Construction Co, Inc.
- GCI Construction, Inc.
- Kennedy Pipeline Construction
- Paulus Engineering, Inc.
- Shoffeitt Pipeline, Inc.
- T.E. Roberts, Inc.

The proposals were evaluated based on related project experience, project team expertise, responsiveness, past performance, familiarity with cities within the District's service area, fees, and other unique qualifications. The proposals received were of high quality and extremely competitive. The firms that offered the overall best value to the District were Paulus Engineering, Inc., Shoffeitt Pipeline, Inc., and T.E. Roberts, Inc. Each of the firms have provided quality services for the District in the past, have competitive rates, and are familiar with the cities within the District's service area.

The agreements will be managed on a time, materials and labor basis based on the unit prices submitted by each of the contractors in their fee proposals. The form of the agreements has been reviewed and approved by legal counsel. They include the necessary insurance, bonding and indemnification terms with the contractors performing the repair work.

Attachment: Agreement for On-Call Construction Support Services

**AGREEMENT FOR ON-CALL CONSTRUCTION SUPPORT SERVICES
BETWEEN
MOULTON NIGUEL WATER DISTRICT AND _____
Contract No. OM16-17.003**

This Agreement for On-Call Construction Support Services (“Agreement”) is made and entered into effective this _____ day of _____ 20____, by and between the **MOULTON NIGUEL WATER DISTRICT** (hereinafter referred to as “DISTRICT” or “Owner”) and _____ (“CONTRACTOR”), with reference to the following:

- A. On an As Needed basis, DISTRICT, in a timely manner, must engage a contractor to perform the work necessary to protect the health, safety, or welfare of the public and/or DISTRICT facilities.
- B. CONTRACTOR is on DISTRICT’s pre-approved contractor’s list, has previously provided bonds and insurance documentation to cover the construction support services and/or work hereunder, and is qualified to perform on-call construction support services and work (“services,” “work,” or “services/work”) for DISTRICT.
- D. The objective of this Agreement is for DISTRICT to authorize CONTRACTOR to provide construction support services/work on an on-call basis related to service, repair and construction of DISTRICT facilities.

DISTRICT and CONTRACTOR are sometimes referred to in this Agreement individually as a “party” or jointly as the “parties.”

THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES; PRICE; PERFORMANCE STANDARDS

1.1 If a need for immediate services/work arises, as determined by DISTRICT, a DISTRICT representative will contact CONTRACTOR to request information regarding CONTRACTOR’s availability and price for the services/work. In response to DISTRICT’s request, CONTRACTOR shall deliver a signed, written cost quote 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 shown in **Exhibit A** hereto and incorporated herein by this reference; and (c) the estimated time for performance of the services/work. If selected to perform the services/work, a written order (“work order”) and Notice to Proceed (“NTP”) as set forth in **Exhibit B** will be issued by DISTRICT to CONTRACTOR, and accepted by CONTRACTOR’s authorized representative in writing. The terms of this Agreement will apply to all executed work orders. Work orders may include added

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or deleted, or revised or amended, specifications or Agreement terms for the particular services/work being provided thereunder. Written quotes and work orders, including any revisions, amendments, deletions or any other changes therein are considered incorporated terms of this Agreement upon execution.

For construction support services/work, as determined by DISTRICT, circumstances may not allow time to perform the cost quote process described above. In such cases, a DISTRICT representative will contact the CONTRACTOR and request that CONTRACTOR perform construction support services/work on a time and materials basis in accordance with the Rate Schedule in **Exhibit A** and the terms and conditions of this Agreement, and issue the corresponding work order for performance.

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.

1.2 CONTRACTOR shall provide a list of any subcontractors to DISTRICT prior to commencement of services/work. It is agreed and acknowledged that should CONTRACTOR fail to conform 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.

CONTRACTOR 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.

1.3 In addition to compliance with the terms of any work order and the terms of this Agreement, all services/work shall be performed in accordance with DISTRICT's ***Standard Specifications and Standard Plans for Water, Sewer, and Recycled Water Facilities ("Standard Specifications")*** that are applicable to the work, which are incorporated herein by this reference and made a part hereof. DISTRICT's ***General Provisions*** included as part of **Appendix 1** to this Agreement are incorporated in this Agreement by this reference. CONTRACTOR agrees and acknowledges that it is familiar with the terms of the ***General Provisions*** and ***Standard Specifications*** and will be able to perform any work order under this Agreement in compliance with all such applicable terms.

1.4 DISTRICT is a public agency in the State of California ("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 and will be complied with by CONTRACTOR, including but not limited to the payment of prevailing wages in accordance with the terms of **Appendix 1**. CONTRACTOR represents and warrants the services/work provided under this Agreement shall fully comply, at CONTRACTOR's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations applicable to the services/work at the time services/work are provided to and accepted by DISTRICT.

1.5 The services/work shall be completed in accordance with all local, state and federal rules, regulations and codes applicable to health and safety. CONTRACTOR shall be solely and completely responsible for conditions of the service/work sites, including safety of all persons and property during performance of the services/work. CONTRACTOR's operations for the services/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, 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.

CONTRACTOR shall conduct its operations so 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 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.

1.6 CONTRACTOR's performance of services/work is subject to observation by DISTRICT's representatives and possible inspection by local municipalities. The observation of the services/work, if any, by DISTRICT's representative shall not relieve CONTRACTOR of any obligations under the Agreement as prescribed, or CONTRACTOR's obligations to perform the work in accordance with all terms and provisions required by the *Standard Specifications*, *General Provisions*, or applicable municipal permits and municipal inspection standards. DISTRICT shall require written evidence of municipal inspection and approval, as applicable, prior to DISTRICT's acceptance and payment for services/work under each work order.

1.7 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 of the services/work and completion of the services/work.

1.8 CONTRACTOR shall not delegate or assign its duties under this Agreement without the written consent of DISTRICT. This Agreement is binding on the successors of the parties.

1.9 CONTRACTOR acknowledges that services/work it completes under this Agreement shall not provide it with any right to obtain follow-up services/work that may be required, even if the follow-up services/work is a continuation of services/work begun by the CONTRACTOR under a work order/NTP issued under this Agreement.

2. PAYMENT

2.1 Daily Logs. CONTRACTOR is required to prepare and submit a daily work log to DISTRICT's representative on-site, unless otherwise waived in writing by the DISTRICT Representative. The daily work log shall be submitted each day and be signed off by both parties. The daily work log will be used to verify CONTRACTOR's invoices for a work order based on time and materials payment. At a minimum, the work log should list each employee, classification, and hours worked each day; the type of equipment used on-site each day, hours of operation; and a brief summary of services/work performed.

2.2 Compensation. In consideration for providing the services/work pursuant to this Agreement, DISTRICT agrees to compensate CONTRACTOR for services/work satisfactorily performed under any work order on a time and materials basis at the rates and amounts in the Rate Schedule attached hereto as **Exhibit A** and incorporated herein. Total payments under this Agreement for all work orders collectively shall not exceed One Hundred Fifty Thousand Dollars (\$150,000) per year for each and every year this Agreement is in effect, including any renewal term. Individual work orders shall be subject to specific not-to-exceed amounts as may be approved by the District in its sole discretion and incorporated in the terms of the work orders.

2.3 Invoices. DISTRICT shall pay for services/work on a time and materials basis in accordance with **Exhibit A** – Rate Schedule, subject to any not-to-exceed quote that may be applicable and on which the services/work was awarded. CONTRACTOR shall submit itemized invoices, in a format approved by DISTRICT, with supporting documentation including but not limited to, daily logs described above, paid receipts and invoices to validate the charges for each invoice. DISTRICT shall pay invoices within thirty (30) days of receipt. Payments shall be subject to review for compliance by DISTRICT with the requirements of this Agreement. "Contract No OM16-17.003" and job title shall be included on all invoices submitted for payment under this Agreement. CONTRACTOR's Rate Schedule may be amended in the event prevailing wage schedules are revised.

2.4 Retention. DISTRICT shall 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. Pursuant to Public Contract Code section 22300, for monies earned by the CONTRACTOR and withheld by the DISTRICT to ensure the performance of the Agreement, the CONTRACTOR may, at its option, choose to substitute securities meeting the requirements of Public Contract Code section 22300.

2.5 Final Acceptance. Within thirty (30) calendar days of DISTRICT's "final acceptance" of work under a work order, DISTRICT will make final payment to CONTRACTOR of all invoices and Retention, 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 of accepting the work under a work order as being complete,

including the filing of the *Notice of Completion*. No certificate given or payment made under the Agreement shall be conclusive evidence of performance of the Agreement and no payment shall be an acceptance of any defective work or improper materials.

3. TERM OF AGREEMENT; TERMINATION

3.1 This Agreement shall commence on the date of this Agreement as stated above and continue for a one year term. The District may elect to extend the contract for two additional one year terms with the approval of the District's General Manager.

CONTRACTOR's performance of services/work under this Agreement is contingent upon its placement on the DISTRICT'S pre-approved contractors list. If, for some reason, CONTRACTOR is no longer eligible to be a pre-approved contractor, this Agreement shall terminate automatically, subject to Section 3.2.

3.2 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. Any termination by CONTRACTOR shall not be effective as to any services/work previously performed hereunder, or any services/work being undertaken at the time of such termination by CONTRACTOR, and shall only apply prospectively. CONTRACTOR remains responsible for the completion of any services/work still outstanding under a work order in accordance with the terms of this Agreement and work order. CONTRACTOR's indemnity and warranty obligations as to any work order, as well as any outstanding obligations of CONTRACTOR at the time of any termination, shall survive the expiration or termination of this Agreement. On DISTRICT's termination, CONTRACTOR will be entitled to the reasonable value of the services/work performed for which it has not received prior compensation under a work order, subject to any offset from such payment representing DISTRICT 's damages from any material breach of the terms of this Agreement by CONTRACTOR or as otherwise provided for under Section 2. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to DISTRICT.

4. INSURANCE, PUBLIC WORKS BONDS

4.1 The CONTRACTOR shall carry all insurance required by DISTRICT for placement on the pre-approved contractor's list and provide evidence by certificates and additional insured endorsements naming the DISTRICT and its directors, officers, employees, engineers and representatives, as well as all public agencies issuing permits for work and all property owners of the work site that insures in connection with the services/work and each work order. The CONTRACTOR shall maintain said coverage during the term of this Agreement. If applicable, CONTRACTOR shall evidence that the payment and performance bonds previously provided by CONTRACTOR when placed on the pre-approved list remain valid bonds that cover the services/work and each applicable work order during the term of this Agreement, and the Warranty Period under Section 6.

4.1 Before commencing performance of the Work contracted for hereunder, CONTRACTOR shall furnish Payment and Performance bonds (the "Bonds") as required by

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Section 9550 of the Civil Code, and as approved by District, from a single surety licensed and admitted in the State with an agent for service of process in California and acceptable to the District in the District's sole discretion.

b. Bonds shall be purchased by CONTRACTOR in increments of \$100,000.00 each (both Payment and Performance bonds), for surety coverage of the initial \$100,000.00 of Work performed. Once Work performed by CONTRACTOR reaches 80% of the bonded amounts, CONTRACTOR shall purchase subsequent Bonds to cover the next \$100,000.00 of Work, consecutively, through the Agreement term, and up to the Agreement Maximum Amount. At no time shall any Work be performed by CONTRACTOR without the required bonding in place. It shall be CONTRACTOR's responsibility to ensure that all Work performed be in compliance with the bonding requirements set forth herein.

c. CONTRACTOR shall deliver all Bonds required hereunder to the District prior to the commencement of Work, or if the Work is commenced prior thereto in response to a Work Order, the CONTRACTOR shall, submit evidence satisfactory to the District that such Bonds will be issued.

d. District agrees to reimburse 100% of the total amount of the Bond premiums paid by the CONTRACTOR under this Agreement in consideration of CONTRACTOR maintaining availability for on-call Work during the term of this Agreement. District will reimburse such premium amounts within forty-five (45) days of District's receipt of invoice and following CONTRACTOR's posting of Bonds.

e. CONTRACTOR shall use District's forms, which are attached hereto as **Exhibit 4** and **Exhibit 5**, for the Bonds.

4.2 Nothing in the insurance requirements set forth in this Agreement or under the bonding terms is to be construed as limiting the liability of CONTRACTOR or CONTRACTOR's insurers or sureties. CONTRACTOR agrees that the provisions of this Section 4 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.

5. INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall hold harmless, indemnify, and defend, including the duty and cost to defend as provided by Section 2778 of the California Civil Code, DISTRICT and its directors, officers, employees, engineers and representatives as well as all public agencies issuing permits in connection with the services/work, and all property owners of the services/work site ("indemnitees"), from liability, claims, damages, demands, actions, attorney's fees, costs and expenses arising out of the performance of the services/work under this Agreement, or actual or alleged non-performance, or the furnishing of materials by CONTRACTOR or its subcontractors, including but not limited to, claims by the CONTRACTOR or CONTRACTOR's employees for damages to person or property, except for

the sole negligence or willful misconduct or active negligence of the District, its directors, officers, engineers, employees and representatives.

In furtherance of CONTRACTOR's obligations in this Section 5, CONTRACTOR shall defend itself and the indemnitees against any and all liabilities, claims, losses, damages, actions, attorney's fees, costs and expenses arising out of the performance of the services/work, or actual or alleged non-performance, or the furnishing of materials by CONTRACTOR or its subcontractors, including but not limited to claims by the CONTRACTOR or CONTRACTOR'S employees for damages to person or property.

This indemnity obligation shall survive the termination or expiration of the Agreement and the completion of any services/work pursuant to any work order, or otherwise.

6. WARRANTY

CONTRACTOR fully warrants and guarantees, for a period of three hundred sixty-five (365) days from the date of "final acceptance" (as defined in section 2.4) of any work by DISTRICT ("Warranty Period"), that: (1) all goods, materials, and equipment supplied are new; conform to the *Standard Specifications*; are of first class material and workmanship and are free from defects; and (2) that all work will be of good quality, performed to the standard of care customary in CONTRACTOR's trade or profession. Under this guarantee, CONTRACTOR shall repair and replace any and all work, together with any other work which may be displaced in so doing, that does not meet the terms above under (1) and (2) within the Warranty Period, without expense whatsoever to DISTRICT and with ordinary wear and tear and unusual abuse or neglect excepted. Neither DISTRICT's inspection nor failure to inspect shall relieve CONTRACTOR of any obligation hereunder. If in DISTRICT'S opinion, any article, material or work fails to conform to specifications or is otherwise defective, CONTRACTOR shall promptly replace same at CONTRACTOR's expense. No acceptance or payment by DISTRICT shall constitute a waiver of the foregoing, and nothing herein shall exclude or limit any manufacturers, suppliers or other express warranties, or warranties implied by law.

CONTRACTOR will post a warranty bond pursuant to the terms of Section 4 for the Warranty Period. In the event of CONTRACTOR's failure to comply with the above-mentioned conditions within seven (7) days after being notified in writing, DISTRICT may proceed to have the work repaired or replaced and made good at the expense of CONTRACTOR who agrees to pay the cost of and charges therefore immediately on demand, or DISTRICT may tender demand to the surety under the warranty bond. 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 6. If CONTRACTOR cannot be contacted or does not comply with DISTRICT's request for correction within a reasonable time as determined by DISTRICT, or the warranty bond surety does not respond, DISTRICT may, notwithstanding the provisions of this Section 6, 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 6 or elsewhere in the Agreement.

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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. CONTRACTOR agrees to furnish DISTRICT, and assign over to DISTRICT as required, all appropriate warranty certificates upon completion of the work. No warranty whether provided for in this Section 6 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.

7. RECORDS

7.1 CONTRACTOR shall preserve and retain any and all records of or related to the services/work, including all records of or related to this Agreement and the services/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.

7.2 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 this Agreement. CONTRACTOR, upon request, shall make the records of the services/work available for the purposes described in this Section 7 at all reasonable times during the period CONTRACTOR is required to preserve and maintain such records.

8. CLAIMS

8.1 Claims. Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This section shall be construed to be consistent with said statutes. For purposes of these procedures, "Claim" means A separate demand by the CONTRACTOR, after the DISTRICT has denied CONTRACTOR's timely and duly made request for payment for extra work and/or a time extension, for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the CONTRACTOR pursuant to the Agreement, or (C) an amount the payment of which is disputed by the DISTRICT.

8.1.1 Prerequisites. CONTRACTOR shall timely comply with all notices and requests for extra work and extensions of time as a prerequisite to filing any claim governed by this section. The failure to timely submit a notice or request payment for extra work or an extension of time, or to timely provide any other notice or request required by the Agreement shall constitute a waiver of the right to these procedures.

8.1.2 Claim Submittal. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or

before the date of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements otherwise provided by this Agreement for the filing of claims, including all requirements pertaining to compensation or payment for extra work, disputed work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

8.1.3 Supporting Documentation. The CONTRACTOR shall submit all claims in the following format:

- (1) Summary of claim merit and price, reference Agreement provisions pursuant to which the claim is made;
- (2) List of documents relating to claim including
 - (a) Specifications
 - (b) Drawings
 - (c) Clarifications (requests for information)
 - (d) Schedules
 - (e) Other
- (3) Chronology of events and correspondence
- (4) Analysis of claim merit
- (5) Analysis of claim cost
- (6) Time impact analysis in CPM format

8.1.4 District's Response. Upon receipt of a claim pursuant to this section, DISTRICT shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the CONTRACTOR a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the public entity issues its written statement.

- (1) If the DISTRICT needs approval from its governing body to provide the CONTRACTOR a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the DISTRICT shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the

CONTRACTOR a written statement identifying the disputed portion and the undisputed portion.

- (2) Within 30 days of receipt of a claim, the DISTRICT may request in writing additional documentation supporting the claim or relating to defenses or claims the DISTRICT may have against the CONTRACTOR. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of DISTRICT and the CONTRACTOR.
- (3) The DISTRICT's written response to the claim, as further documented, shall be submitted to the CONTRACTOR within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the CONTRACTOR in producing the additional information or requested documentation, whichever is greater.

8.1.5 Meet and Confer. If the CONTRACTOR disputes the DISTRICT's written response, or the DISTRICT fails to respond within the time prescribed, the CONTRACTOR may so notify the DISTRICT, in writing, either within 15 days of receipt of the DISTRICT's response or within 15 days of the DISTRICT's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the DISTRICT shall schedule a meet and confer conference within 30 days for settlement of the dispute.

8.1.5 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the CONTRACTOR a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the CONTRACTOR sharing the associated costs equally. The public entity and CONTRACTOR shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

- (1) If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
- (2) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

- (3) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
- (4) The mediation shall be held no earlier than the date the CONTRACTOR completes the Work or the date that the CONTRACTOR last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.
- (5) If following the mediation, the claim or any portion remains in dispute, the CONTRACTOR must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the CONTRACTOR submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

8.1.6 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this section:

- (1) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures.. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
- (2) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
 - (a) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B)

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any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

8.1.7 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, construction claims and/or changed conditions, the CONTRACTOR must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the Agency. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions have been followed by CONTRACTOR. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the Agency may be filed. A Government Code claim must be filed no earlier than the date the work is completed or the date the CONTRACTOR last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

8.1.8 DISTRICT's Responses. The DISTRICT's failure to respond to a claim from the CONTRACTOR within the time periods described in this section or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. DISTRICT's failure to respond shall not waive DISTRICT's rights to any subsequent procedures for the resolution of disputed claims.

8.2 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 services/work, or this Agreement. DISTRICT shall be entitled to recover from CONTRACTOR DISTRICT's reasonable costs incurred in providing such notification.

8.3 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.

9. LABOR

9.1 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 subcontractor 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 the basic rate of pay as provided in said section 1815.

9.2 The Agreement is subject to California Labor Code section 1720, et seq., and CONTRACTOR and any subcontractor shall pay not less than the specified prevailing rates of wage to all workers employed in performance of the Work. Pursuant to the provisions of section 1770 of the California Labor Code, DISTRICT has obtained the general prevailing rate of wages and employer payments for health and welfare, vacation, pension and similar purposes, as determined by the Director of the Department of Industrial Relations, a copy of which is on file in the office of DISTRICT, and shall be made available for viewing to any interested party upon request. The CONTRACTOR and each subcontractor shall forfeit as a penalty to DISTRICT not more than Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate in violation of the Labor Code. In addition, the difference between the prevailing wage rate 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.

9.3 CONTRACTOR'S 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 subcontractor under the CONTRACTOR. It shall be the responsibility of the CONTRACTOR to effectuate compliance on the part of itself and any subcontractors with the requirements for 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.

9.4 Pursuant to Labor Code section 1776, the CONTRACTOR and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the work. CONTRACTOR shall certify under penalty of perjury that records maintained and submitted by CONTRACTOR are true and accurate. CONTRACTOR shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury. In the event of noncompliance with the requirements of this Section, the CONTRACTOR shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to achieve compliance with this section. If CONTRACTOR or subcontractor does not comply after such ten (10)-day period, the CONTRACTOR shall, as a penalty to DISTRICT, forfeit One Hundred Dollars (\$100) for each day, or portion thereof, for each worker until strict compliance is effectuated.

9.5 In accordance with Labor Code section 1771.4, the CONTRACTOR and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. CONTRACTOR shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

9.6 CONTRACTOR shall post, at appropriate conspicuous points on the work site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

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9.7 Pursuant to Labor Code sections 1725.5 and 1771.1, the CONTRACTOR and its subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Agreement, CONTRACTOR represents that it is aware of the registration requirement and is currently registered with the DIR. CONTRACTOR shall maintain a current registration for the duration of the Agreement. CONTRACTOR shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all subcontractors are registered at the time this Agreement is entered into and maintain registration for the duration of the Agreement.

9.8 Pursuant to the requirements of Division 4 of the Labor Code, the CONTRACTOR will be required to secure the payment of worker's compensation to its employees in accordance with the provisions of section 3700 of the Labor Code. Prior to commencement of work, the CONTRACTOR shall sign and file with the DISTRICT a certification in the following form:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract."

10. ASSIGNMENT OF ANTI-TRUST ACTIONS

Section 7103.5 of the Public Contract Code specifies that in entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Sec. 16700) of Part 2 of Division 7 of the Business Profession Code, arising from purchase of goods, services or materials pursuant to the contract or subcontract. Pursuant to Public Contract Code Section 7103.5 CONTRACTOR and all of its subcontractors hereby offer and agree to assign to DISTRICT all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Sec. 16700) of Part 2 of Division 7 of the Business Profession Code, arising from purchase of goods, services or materials pursuant to this Agreement. This assignment shall become effective when DISTRICT tenders final payment to CONTRACTOR without further acknowledgement by the parties.

11. STATE LICENSE BOARD NOTICE

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

12. GENERAL TERMS

12.1 This Agreement, including all documents and exhibits and appendices attached hereto, or incorporated herein by reference, and the executed work orders represent the entire agreement between DISTRICT and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral, including any previous agreements or contracts between the parties to the extent the same are inconsistent with the terms hereof.

12.2 This Agreement shall not be considered modified, altered, changed, or amended in any respect unless documented in writing and signed by both parties.

12.3 This Agreement shall be interpreted according to the laws of the State. 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.

12.4 If any section 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 enforceable 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.

12.5 The failure of either party to request performance in accordance with the terms of this Agreement shall not be deemed a waiver of the right to enforce the terms of this Agreement.

12.6 CONTRACTOR is an independent CONTRACTOR under this Agreement and not an employee of DISTRICT. The personnel of CONTRACTOR are comprised of persons experienced in the work associated with the Services in all aspects.

12.7 All documents or other information developed or received by CONTRACTOR and related to the services/work shall be delivered to DISTRICT as the property of DISTRICT.

12.8 Each party represents and warrants this Agreement is valid and binding, is duly authorized by appropriate corporate or approving action, and that the person initialing this Agreement has the authority to bind such party to this Agreement

12.9 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.

10. NOTICE

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

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To DISTRICT:

Assistant Director of Engineering
Moulton Niguel Water District
27500 La Paz Road
Laguna Niguel, CA

To CONTRACTOR:

Notwithstanding the foregoing, the parties agree that each party may rely on a facsimile signature of the other with respect to matters pertaining to this Agreement, and the confirmation of delivery of fax shall be sufficient evidence of delivery of any notice required hereunder.

[Remainder of this page blank]

IN WITNESS WHEREOF, this Agreement has been executed in the name of DISTRICT and CONTRACTOR as of the date and year first written above.

DISTRICT:
MOULTON NIGUEL WATER DISTRICT

Signed: _____
DISTRICT REPRESENTATIVE

Dated: _____

CONTRACTOR:

Signed: _____

Dated: _____

By: _____
[Print Name]*

Its: _____

*Attach corporate officer certification or notary acknowledgement

Signature Page On-Call Construction Support Services Agreement

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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)

*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 Owner's office, completed and attached to this page.

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Exhibit A
Rate Schedule

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OM16-17.003 - On-Call Construction Support Services_Sample Agreement

Exhibit B

Work Order Form

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

This Work Order is executed pursuant to the “**AGREEMENT FOR ON-CALL CONSTRUCTION SUPPORT CONSTRUCTION AND MAINTENANCE/REPAIR SERVICES BETWEEN MOULTON NIGUEL WATER DISTRICT AND _____** (Contract No. OM16-17.003)” 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 Description: _____

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:

Owner’s Representative

Contractor’s Authorized Representative- (print name here:

II. OWNER’s ACCEPTANCE:

Pursuant to Section 2.4.of the Agreement, OWNER accepts all work completed under this Work Order on the date below, subject to all terms of the Agreement.

Owner’s Representative

Date: _____

Appendix 1

General Provisions

- I. DISTRICT's General Provisions** [attached]:
 - 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 1-10,12-18, 23, 25-27
 - e. Section 9, subdivision 5-6
 - f. [add any other applicable sections at time work order issued as part of work order]

- II. Standard Specifications for Public Works Construction excluding Sections 1-9 (2012 Greenbook)
 - [List specific Greenbook Sections Staff wants applicable]

- III. [as applicable] Requirements of City with authority over work site/permit terms

***** 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.***

New Provisions Added 9/9/15

Item #1. The specific Services to be provided by CONTRACTOR (“Work”) shall be specified in individual Work Orders to be prepared by DISTRICT as the Services are requested from CONTRACTOR. The Services shall be provided in accordance with the applicable Work Order received from DISTRICT's Representative and Appendices A through ____ hereto, attached hereto and incorporated herein by this reference. By entering into this Agreement, DISTRICT does not give any guarantee to CONTRACTOR that DISTRICT will select CONTRACTOR for any Work Order.

Item #2. All terms and conditions in this Agreement shall govern performance under and shall apply to all Work Orders received from DISTRICT by inclusion therein of the following clause: “For purposes of this Work Order, the general terms and conditions applicable shall be the Agreement between DISTRICT and CONTRACTOR for 2015 to 2017, which by this reference is incorporated in this Work Order and made a part hereof.”

Item #3. In the event of conflicting provisions among a specific Change Order; Work Package or Request; the Agreement; and Exhibit A, the Appendices to this Agreement, DISTRICT's Water/Sewer Public Work Standard Specifications Special Provisions, the Standard Specifications, the terms of these documents shall control in the following order of priority:

- 1) Change Order,
- 2) Work Order,
- 3) Agreement,
- 4) Special Provisions of DISTRICT's Water/Sewer Public Works Standard Specifications,
- 5) Standard Specifications,

- 6) Appendices to this Agreement, and
- 7) Exhibit A of the Agreement

Item #4. B. Representatives of CONTRACTOR. Prior to commencing work under any Work Order, CONTRACTOR shall designate for each Work Order a Representative with whom all contacts concerning that Work Order shall be made. CONTRACTOR's Representative or designee shall be on the job site at all times during performance of the work.

DISTRICT shall have the right but not the obligation to approve CONTRACTOR's designation of a Representative for each Work Order. If DISTRICT disapproves CONTRACTOR's Representative for a Work Order, CONTRACTOR shall promptly designate another Representative acceptable to DISTRICT in its sole discretion. Failure by DISTRICT to object to CONTRACTOR's designation of a Representative at any time before or during performance of the work shall not be a waiver of DISTRICT's right to require CONTRACTOR to replace Representative at any time during performance of the Work.

Other than as set forth above, CONTRACTOR shall give a minimum of thirty (30) days advance notice and receive DISTRICT's written approval prior to substitution of any Representative(s) designated for Work Order pursuant to this section, prior to assignment to the project or during the performance of the Work under this Master Agreement. CONTRACTOR shall assign additional staff as needed to perform the Work in a timely and expeditious manner.

Item #5. PART II - SERVICES TO BE FURNISHED BY DISTRICT

A. Documents. DISTRICT will, upon request, make available to CONTRACTOR original or copies of existing drawings, maps, and other existing information relevant to the Work to be performed as may be readily available to DISTRICT.

B. Representative of DISTRICT. For the Work defined as Public Works pursuant to state law and/or municipal ordinance and so identified in the applicable Work Order Package, the Director of Public Works of DISTRICT or his designee shall represent DISTRICT in all matters pertaining to such Work to be performed under this Master Agreement. CONTRACTOR shall,

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in the performance of this Master Agreement for such Work, consult with the Director of Public Works or his designee and other DISTRICT employees as the Director of Public Works or his designee may direct.

C. Inspection. DISTRICT may, at any time and from time to time, inspect the Work prior to its completion to see that the Work is in accordance with the Work Order and Agreement. Such inspections will be conducted at reasonable times. Notwithstanding the above, DISTRICT may inspect the 'work at any time if the Director of Engineering & Operations or his respective designee, determines in his/her sole discretion it is necessary for health and safety reasons. Any such inspection shall not waive DISTRICT's right to reject the Work at a later time, and shall not relieve CONTRACTOR from its obligation to complete the Work in accordance with the specific Work Order.

Item #6. The General Manager or the Director of Engineering & Operations is each authorized to extend the term of the Agreement for such time as is necessary for completion of outstanding Work Orders in progress at that time. In no event, however, shall such extension exceed six (6) months.

Item #7. 3. The nature of the Work is such that timely performance is critical to the orderly progress of related Work and to the operating schedule of DISTRICT. CONTRACTOR shall, if required under the applicable Work Order, provide a detailed construction schedule for that Work Order, which schedule is satisfactory to DISTRICT, which sets forth at a minimum each phase of the Work, the number of personnel to be utilized for each phase, and the specific time required to complete each phase.

4. If performance of the Work falls behind the schedule agreed upon by the Parties, CONTRACTOR shall, upon request by the DISTRICT Representative, make reasonable efforts to accelerate its performance of the Work at no additional cost to DISTRICT until performance of the Work conforms to the agreed upon schedule.

5. For both Work Order Packages and Requests, CONTRACTOR shall obtain approval from the DISTRICT Representative prior to expenditure of any overtime which would result in extra cost to DISTRICT. DISTRICT reserves the right to refuse to pay overtime

premiums when CONTRACTOR has the option to provide services at straight-time by utilizing additional personnel, consecutive shifts or other methods approved by DISTRICT.

6. The time period(s) specified for performance of the Work Order, shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, pestilence, and other natural catastrophes, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, government priorities, restraint by court order or public authority and action or non-action by or inability to obtain the necessary authorization or approvals from any governmental agency or authority, and/or acts of any governmental agency, including DISTRICT, which by the exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence has been unable to overcome, if CONTRACTOR immediately notifies the DISTRICT Representative in writing of the causes of the delay and the anticipated length of the delay. The DISTRICT representative shall ascertain the facts and the extent of delay, and may extend the time for performing the Work Order Package or Request for the period of the enforced delay if, in the judgment of the DISTRICT Representative, such delay is justified. The DISTRICT Representative's determination shall be final and conclusive upon the Parties to this Agreement. In the event of delay, however caused, CONTRACTOR's sole remedy shall be an extension of the time of performance of the Work Order, pursuant to this Section, and CONTRACTOR shall not be entitled to recover damages against DISTRICT. Any change to the Work completion date shall be documented by a written Change Order to the Work Order.

7. The parties agree that time is of the essence in obtaining the Work and that it is essential that CONTRACTOR provide the Work by the date specified in each Work Order. The parties agree that in the event that the Work is not provided by such date, actual damages to DISTRICT as a result of that failure would be impractical or extremely difficult to ascertain. Subject to the provisions of Section 5 above, therefore, CONTRACTOR agrees to pay DISTRICT in the event of CONTRACTOR's failure to complete the Work by such date the sum of Five Hundred Dollars (\$500.00) per calendar day as liquidated and actual damages for-the delay.

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8. A written statement requesting acceptance of the Work shall be submitted to the DISTRICT Representative by CONTRACTOR, with a request for acknowledgment. The acknowledgment shall be executed by DISTRICT within thirty (30) days after final inspection determines that the Work has been satisfactorily completed and DISTRICT has accepted the Work. Execution of the acknowledgment shall constitute final acceptance by DISTRICT.

Item #8. C. Compensation and Payment.

1. Limits. It is understood by and agreed between the parties to this Agreement that full and complete payment for Work performed for a single Work Order in accordance with this Agreement shall not exceed the sum of _____ Thousand Dollars (\$_____,000.00), excluding change orders. CONTRACTOR's performance of the Work shall be compensated on a [Unit Price, Crew Hour Rate or Time, Material and Equipment] basis as set forth in the Proposal, at DISTRICT's election.

2. Contractor's Labor Rates. Unless otherwise stated in the applicable Work Order, CONTRACTOR's performance of the Work on a Time, Material and Equipment basis shall be paid at the hourly rates for the respective classifications as set forth in the Proposal. CONTRACTOR's performance of the Work on a Crew Hour Rate basis shall be paid at the hourly rate for the respective crew composition as set forth in the Proposal. Billing rates shall include (a) all labor-related costs including, but not limited to, payroll costs, benefits, payroll taxes, Workers Compensation Insurance, Liability Insurance, (b) small tools, personal and consumable supplies, (d) home office and field overhead and (e) profit. All travel, subsistence and shift differentials shall be paid as direct reimbursables.

3. Contractor Furnished Material Costs. All material costs as invoiced to CONTRACTOR by its suppliers (including freight charges and all applicable discounts and taxes) plus a fixed percentage as specified in the Proposal for all applicable overhead and handling costs. Such charges for materials shall be separately stated on all invoices. No profit shall be paid by DISTRICT to CONTRACTOR for material costs.

4. Subcontractors. Costs for subcontracted Work shall be paid as invoiced by subcontractors plus a five percent (5 %) markup for administrative costs.

5. Rental Costs.
 - a. Contractor Owned Equipment. Costs for CONTRACTOR's own equipment at rates as set forth in the Proposal.
 - b. Third Party Rentals. Reasonable costs for rental of equipment including insurance, as invoiced by its suppliers to CONTRACTOR as specified in the [Special Provisions] [Standard Specifications].
 - c. Rental Period. Rental period shall begin when equipment is received at jobsite or the Work is initiated, whichever occurs later. Rental period shall end when equipment leaves the jobsite or Work is essentially completed, whichever occurs first. Rental period shall not include time for which equipment is unusable due to unsafe conditions, is inoperative or is in transit.
 - d. Rental Rates. The lowest combination of monthly, weekly, daily and hourly rates shall apply. Rates shall include (1) any routine maintenance, parts and supplies, (2) all applicable insurance, and (3) fuel and transportation costs, as specified in the Proposal.
6. Other Costs. Costs for other items as set forth in the Work Order
7. Pricing Basis. The pricing basis for Work performed on Work Order shall be Lump-sum, Unit Price, Crew Hour Rate, or Time, Material and Equipment as set forth in each specific Work Order.
8. Taxes. CONTRACTOR assumes exclusive liability for, and shall pay before delinquency, all Federal, State or Local sales, use, excise and other taxes, charges or contributions of any kind now or hereafter imposed on, or with respect to, or measured by, the equipment, materials, supplies or labor furnished hereunder or the wages, salaries, or other remunerations paid to individuals employed in connection with the performance of the Work.
9. Method of Payment.
 - a. No payment shall be made under any Work Order until DISTRICT has received the executed acknowledgment of the Work Order, any current required certificate(s) of insurance, and bond(s) from CONTRACTOR.

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b. For Time, Material and Equipment Work, CONTRACTOR shall submit a copy of time sheets daily, for approval and retention by the DISTRICT Representative, listing: employee name, classification, hours worked straight time and overtime, and identification of equipment and materials utilization and materials used . Each monthly invoice shall be supported with sufficient detail to allow DISTRICT to evaluate the invoiced costs, including hours for each classification, with sheets and approved time sheets and applicable rates, invoiced costs from suppliers and subcontractors, and equipment rental charges.

c. For Crew Hour Rate Work, CONTRACTOR shall submit a copy of the time sheets daily, for approval and retention by the DISTRICT Representative listing: crew composition, hours worked straight time and overtime, and additional equipment not covered by the crew hour rate (if applicable). Each monthly invoice shall be supported with sufficient detail data to allow DISTRICT to evaluate the invoiced costs, including crew hours for each crew composition, with approved time sheets and applicable rates, invoiced costs from suppliers and subcontractors, and equipment rental charges. CONTRACTOR shall submit a separate invoice for each DISTRICT Work Order.

d. For Lump sum or Unit Price Work, CONTRACTOR shall submit invoices in accordance with the progress payment schedule outlined in the Work Order Package, or as approved by the DISTRICT Representative in accordance with the work completion schedule.

e. As part of CONTRACTOR's application for payment, CONTRACTOR shall certify that the portion of the Work for which compensation is claimed has been completed in accordance with the terms and conditions and specifications of this Agreement, shall state CONTRACTOR's estimate of the percentage of construction completed to date and the actual construction costs incurred to date, that the amount claimed has not been the subject of a prior application for payment, and an estimate of the time required for completion of the Work. Each application for payment shall identify the Work Order to which it applies and shall be signed by an authorized officer of CONTRACTOR.

f. CONTRACTOR shall submit invoices in a format approved by DISTRICT and as set forth in this section to:

Moulton Niguel Water District

Engineering & Operations
Attention: Project Manager
Construction Support Services Agreement
27500 La Paz Road
Laguna Niguel, CA 92677

g. Upon Final Acceptance of all Work, when requesting final payment, CONTRACTOR shall execute a “Conditional Waiver and Release Upon Final Payment” pursuant” to California Civil Code Section 3262 or successor provision in a form approved by DISTRICT. If requested, CONTRACTOR shall provide further assurances reasonably required by DISTRICT that all subcontractors, suppliers and employees have been paid. No final payment shall be made to CONTRACTOR without full compliance with this requirement.

h. DISTRICT may withhold payment of the whole or part of any amount due or claimed by CONTRACTOR to such extent as may be necessary to protect DISTRICT from losses, including, but not limited to, the following: defective Work not remedied; third party claims filed or reasonable evidence indicating probable filing of such claims; failure of CONTRACTOR to make payment promptly to its employees, suppliers or subcontractors; damage caused by CONTRACTOR to another contractor to DISTRICT; failure of CONTRACTOR to diligently prosecute the Work and maintain satisfactory progress required to meet the work completion schedule; or any other material breach by CONTRACTOR of its obligations under the Work Order, or Agreement.

i. Subject to the above, DISTRICT shall make payment within thirty (30) days after receipt and approval of invoice.

Item #9. G. Other Work.

1. CONTRACTOR acknowledges that this Master Agreement is not exclusive, and that DISTRICT reserves the right to employ or contract with other entities for the performance of the subject Services. CONTRACTOR further acknowledges that its services will be requested on an as-needed basis, and that no promises or guarantees have been made that a particular amount of services will be requested or that any level of compensation may be earned by CONTRACTOR hereunder.

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2. If any part of CONTRACTOR's Work depends upon the Work of another contractor or of the employees of DISTRICT, CONTRACTOR shall inspect and promptly report to the DISTRICT Representative any defects in such Work that renders it unsuitable for the proper execution and results of CONTRACTOR's Work. Failure to so inspect and report any defective Work shall constitute an acceptance of the same by CONTRACTOR as being fit and suitable for the proper execution and results of the Work.

3. CONTRACTOR further agrees that during the performance of the Work, CONTRACTOR shall not hinder or interfere with any individuals whom DISTRICT may employ to do any Work. CONTRACTOR shall suspend any part of the Work, or shall carry on the same, as directed by the DISTRICT Representative, so as to afford all reasonable facilities for the performance of such other Work. CONTRACTOR shall not claim any extra compensation for delays in the Work. CONTRACTOR's sole recourse shall be an extension of time for performance as DISTRICT may grant in accordance with the provisions hereof.

H. Reports. CONTRACTOR shall provide status reports as requested by the DISTRICT Representative. Reports shall compare expended labor hours, recorded costs and actual performance to estimated man hours, estimated costs and scheduled performance for the Work. Such reports shall also include projections of cost overrun/underrun, estimated Work completion date, explanation of any significant variations, and identification of any potential or known developments which may affect the cost to DISTRICT or the Work completion date.

I. Protective Measures. CONTRACTOR shall be responsible for the proper care and protection of all equipment and materials delivered and the Work performed until final acceptance of the Work and issuance of a notice of completion for that Work Order Package or Request by DISTRICT. CONTRACTOR shall also adequately protect adjacent property as provided by law and by this Master Agreement, including, but not limited to, protection of any Work existing in public property. CONTRACTOR shall take all necessary precautions for the safety of its employees and the employees of its contractors, subcontractors, or others working on its behalf on the Work and prevent accidents or injury to individuals on, about, or adjacent to the premises where the Work is being performed. In addition, CONTRACTOR shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards and warnings, including, but not limited to, temporary covering on all

equipment pads, for the protection of its employees and the employees of its contractors, subcontractors, or others working on its behalf and the public.

J. Risk of Loss and Damage. CONTRACTOR shall be responsible for any loss or damage to the Work, or material furnished by DISTRICT for the Work, until Final Acceptance of the Work and issuance of a notice of completion by DISTRICT for a specific Work Order. In the event of loss or damage, if it should become necessary to replace materials furnished by DISTRICT, the cost of replacement shall be paid by CONTRACTOR to DISTRICT. DISTRICT may deduct such costs from any amounts due or to become due CONTRACTOR.

Item #10. Suspension of Work.

1. DISTRICT may at any time suspend the entire Work, or any portion thereof, upon written notice to CONTRACTOR, who shall thereupon discontinue and suspend the Work except such operations as may be necessary to prevent damage to property or to the Work already accomplished. CONTRACTOR shall resume the Work after DISTRICT gives written notice lifting the suspension.

2. CONTRACTOR shall be paid its actual cost as defined in the Proposal for all Work performed in accordance with the orders of DISTRICT during any such suspension. If the Work shall be delayed due to any suspension of Work, CONTRACTOR shall also be entitled to an equitable extension of time within which to complete the Work. DISTRICT shall pay additional reasonable costs actually incurred by CONTRACTOR in deactivating and reactivating the Work caused by a DISTRICT ordered suspension. This shall be CONTRACTOR's sole compensation for suspension of the Work by DISTRICT.

3. The preceding provision of this section shall be construed as applying only to suspension of Work Order Package or Request by DISTRICT and caused by conditions that cannot be reasonably anticipated. The provisions of this section shall not apply to any conditions or suspension of the Work cited in the Work Order or suspension because of inclement weather, or nature of the Work, or operating requirements of DISTRICT, or termination as defined herein.

#5.

M. Termination. DISTRICT may terminate this Master Agreement with or without cause upon giving CONTRACTOR fifteen (15) days prior written notice. If this Master Agreement is terminated without cause, CONTRACTOR will be paid for costs incurred and actual services satisfactorily performed for DISTRICT up to and including the date of termination.

The DISTRICT'S General Manager or Assistant Director of Engineering or their designees is each authorized to terminate the Agreement as stated herein.

N. Disputes. Any dispute that cannot be resolved between the Representatives shall be referred to the Assistant Director of Engineering or his designee, whose decision shall be final. CONTRACTOR shall have no cause of action for any alleged breach of this Agreement by DISTRICT until such time as DISTRICT has made final payment for all Services and Work provided hereunder.

O. Liens. CONTRACTOR shall hold harmless, indemnify and defend DISTRICT from any mechanic's liens or stop notice claims against DISTRICT by CONTRACTOR, subcontractors, employees, or agents pertaining to the Work specified in any Work Order referencing this Agreement.

Item #11. R. Required Bonds. At the execution of this Agreement, CONTRACTOR shall provide both a performance bond and a bond for payment for labor and material to secure its performance of Work under this Agreement. CONTRACTOR shall maintain these bonds for the longer of the entire term of this Agreement or the statutory limitations period for construction defects as set forth in California Code of Civil Procedure Section 337.15 as it may be amended from time to time. . Each such bond shall be written in the principal amount of not less than One Hundred Thousand Dollars (\$100,000.00) and in the form set forth in the Sample Faithful Performance Bond attached hereto as Appendix B and Sample Labor and Material Bond attached hereto as Appendix C. However, should the total value of all Work awarded to CONTRACTOR but not yet completed by CONTRACTOR and accepted by DISTRICT for all Work to be completed pursuant to this Agreement, exceed the sum of One Hundred Thousand Dollars (\$100,000.00) at any time, CONTRACTOR agrees to increase the principal amount of such bonds to an amount not less than the total value of the Work. Such higher bond amount shall be maintained until such time that one or more outstanding Work

Orders have been completed and a corresponding portion of the bond has been released by DISTRICT. At that time, the total principal amount of the bonds may be reduced to the new total amount of all Work Orders then awarded but not yet completed and signed off. Notwithstanding the above, in no event shall the principal amount of each of the bonds be less than One Hundred Thousand Dollars (\$100,000.00) at any time during the entire term of this Agreement. Such bonds shall be written with surety (i) authorized to do business in the State of California by the California Department of Insurance, and (ii) listed on the most current version of the Department of Treasury's Circular 570. Such bonds shall be in the form set forth in Appendices B and C, respectively.

Item #12. S. Breach of Agreement. CONTRACTOR shall not be relieved of liability to DISTRICT for damages sustained by DISTRICT by virtue of any breach of this Agreement by CONTRACTOR, and DISTRICT may withhold any payments to CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due DISTRICT from CONTRACTOR is determined. In addition, DISTRICT may pursue all remedies available under law for breach of this Agreement. The waiver by either party of any breach to this Agreement shall not constitute a waiver as to any succeeding breach.

Item #13. In consideration for the compensation paid to CONTRACTOR by DISTRICT, CONTRACTOR agrees that DISTRICT shall not be liable or responsible for any benefits, including, but not limited to, worker's compensation, disability, retirement, life, unemployment, health or any other benefits, and CONTRACTOR agrees that he shall not sue or file a claim, petition or application against DISTRICT or any of its officers, employees, agents, representatives, or sureties.

CONTRACTOR shall at all times be responsible for the acts and omissions of subcontractors and individuals directly or indirectly employed by them. CONTRACTOR is responsible for performance of all the Work, whether performed by CONTRACTOR or its subcontractors. The Work Order shall not give rise to any contractual relationship between DISTRICT and a subcontractor. DISTRICT shall not undertake any obligation to pay or to be responsible for the payment of any sums to any subcontractor.

EXHIBIT A
GENERAL SCOPE OF WORK – ON - CALL CONSTRUCTION SUPPORT
SERVICES

PART A: CONSTRUCTION, MAINTENANCE SERVICES

The services of a CONTRACTOR(S) are required, on an as-needed basis, for the construction support or immediate construction, maintenance, repair, abandonment, and relocation of water distribution and production facilities, and sewer treatment and conveyance/disposal facilities. Typical work will include, but not be limited to the following:

1. Repair, relocate, replace, abandon, and install aboveground and underground water mains and pipelines, fire hydrants, large services (larger than 2”), small services (2” and below), line stops, vaults, valves, meter vaults, and meter vault lids.
2. Repair, relocate, replace, abandon, and install aboveground and underground sewer pipelines; sewage lift stations; and any related facilities and equipment to the foregoing.
3. Locate and pothole utility substructures, underground conduits, and underground substructures related to the facilities and work above.
4. Replace and install concrete sidewalks, concrete driveway approaches, concrete curb and gutter, concrete spandrels and cross gutters, concrete pavement, and asphalt concrete pavement related to the facilities and work above.
5. Repair and install, or replace, electric motors.

This is not a description of the actual Services to be performed under the Agreement pursuant to individual Work Orders.

Materials shall be furnished by CONTRACTOR for completion of Work as specified in Work Orders. All Work shall be planned, executed, and completed in accordance with the Work Order. DISTRICT’S Water/Sewer Services Standard Standards; 2012 Standard Specifications for Public Works Construction (Standard Specifications) (excluding Sections 1-9) by Public Works Standards, Inc.; the Special Provisions attached to the Request for Proposals; and the Appendices to the Agreement.

CONTRACTOR shall operate in and around active or energized equipment and shall conduct itself in accordance with all applicable federal, state, and local laws and regulations. CONTRACTOR shall follow DISTRICT'S Standard Specifications in the testing and activation of new and existing water system components or facilities. Required system outages shall be scheduled with and approved by DISTRICT's Assistant Director of Engineering, five (5) working days before the required date. The requirements for repairing, replacing, or installing water or sewer facilities to complete the Work shall be described in the individual Work Order.

The services of a CONTRACTOR are required, on an as-needed basis, to provide construction support Services to repair and/or replace and inspect damages to the Water System. Typical Work will include, but not be limited to the following:

1. Inspect and evaluate damages and restore services to water distribution, production facilities; sewer conveyance facilities.
2. Repair and/or replace mains, pipelines, valves, fire hydrants, services, meters, line stops, vaults, sampling stations, conduits, and substructures.
3. Clean up environmental/hazardous spills and by-products of combustion and/or disinfection.



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** April 17, 2017

FROM: Rodney S. Woods, Assistant Director of Engineering
David Larsen, Principal Engineer

SUBJECT: Professional Services Agreement for Paseo de Valencia Lift Station Rehabilitation

DIVISION: 7

SUMMARY:

Issue: Board action is required to execute a Professional Services Agreement for engineering services for the Paseo de Valencia Lift Station Rehabilitation, Project No. 2011.028.

Recommendation: It is recommended that the Board of Directors approve the Professional Services Agreement for engineering services with CivilSource in the amount of \$119,130; authorize the General Manager or designee to execute the contract and approve amendments up to 10% of the contract value.

Fiscal Impact: Project No. 2011.028 is budgeted in Fund 7, Rehabilitation and Replacement with a proposed FY 2017-18 project budget of \$800,000.

Reviewed by Legal: Yes

BACKGROUND:

The Paseo De Valencia Lift Station was originally constructed in 1965 as a below grade wet-well / dry-well sewage lift station utilizing two pumps and associated equipment. The lift station is located at the southwest corner of Paseo De Valencia and Cabot Road in Laguna Hills. The lift station services portions of Laguna Hills and Mission Viejo and conveys sewage to the Joint Regional Treatment Plant. The lift station was last rehabilitated in 1989 and the existing pumps and related equipment are in need of replacement.

#6.

Professional Services Agreement for Paseo de Valencia Lift Station Rehabilitation

April 17, 2017

Page 2 of 2

The engineering services will include design and preparation of construction documents for the rehabilitation of the lift station. The design will include a condition assessment of the existing structure, and all new equipment, piping, electrical and instrumentation for the complete rehabilitation of the facility.

DISCUSSION:

On March 6, 2017, staff issued a RFP for engineering consulting services to six qualified engineering consulting firms. Three proposals were received and are summarized below:

Consultant / Firm	Proposed Fee
Civiltec Engineering, Inc.	\$99,119
CivilSource	\$119,130
Stantec	\$149,216

Staff performed a thorough review of the proposals received to determine the overall best value for the professional services required. Based on the consultants' specific project understanding and approach, overall proposal quality, project specific experience, proposed project team and cost, staff recommends that CivilSource be awarded the professional services contract.

SUMMARY OF PROJECT BUDGET:

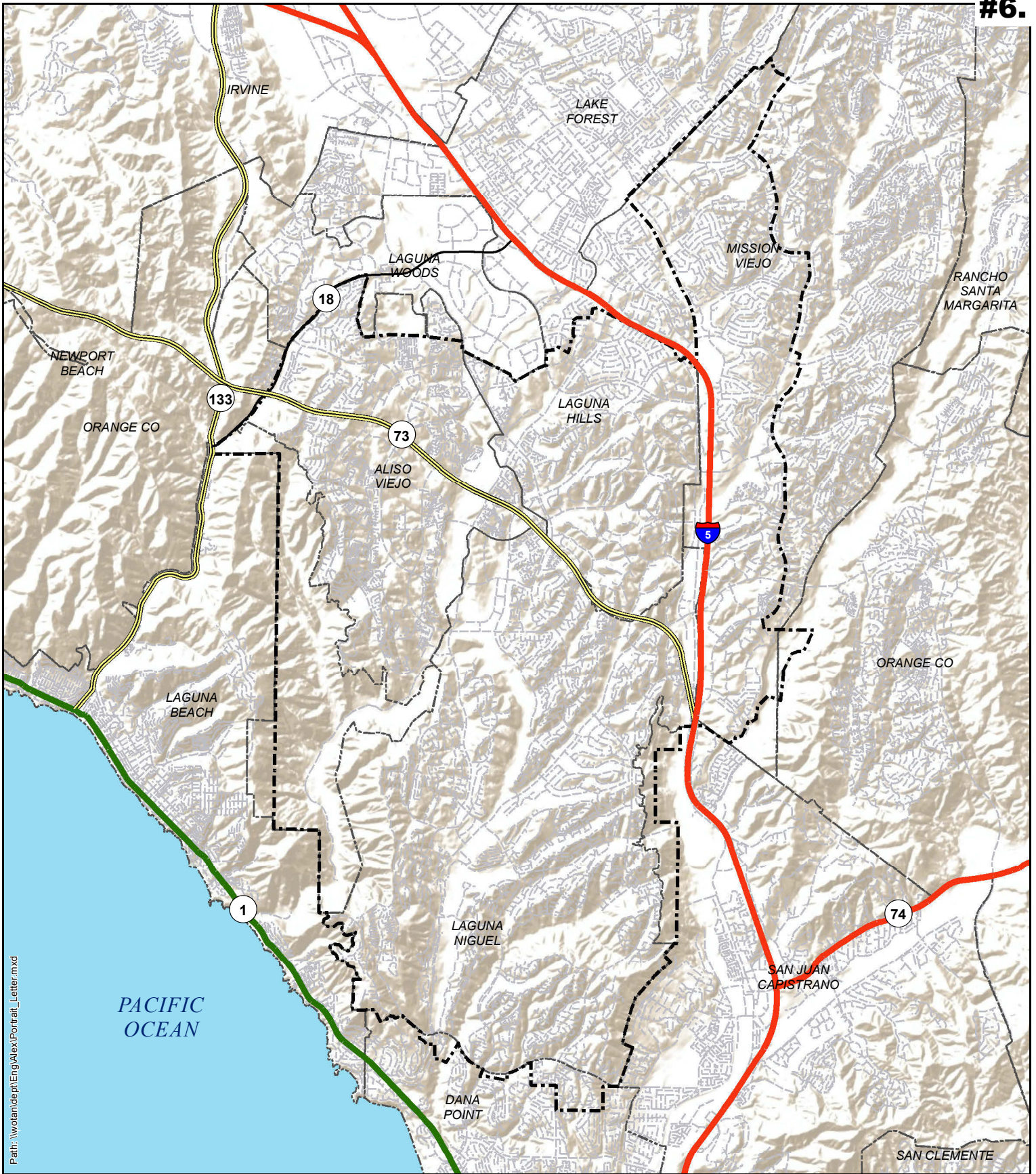
	Project Budget*	Proposed / Approved Contract	Proposed / Authorized Contingency	Total Proposed / Authorized Amount
Project Items				
Engineering	\$132,000	\$119,130	\$11,913	\$131,043
Construction	\$660,000	\$660,957	\$0	\$660,957
Legal, Permits, District Labor	\$8,000	\$8,000	\$0	\$8,000
Totals	\$800,000	\$788,087	\$11,913	\$800,000

*\$650 has been expended to date.

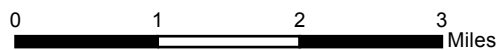
Currently Proposed Amount

Attachments:

1. Exhibit A – Location Map
2. Exhibit B – Professional Services Agreement



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Scale = 1:5,565

**AGREEMENT FOR ENGINEERING SERVICES BETWEEN
MOULTON NIGUEL WATER DISTRICT AND CIVILSOURCE, AN NV5 COMPANY
MNWD PROJECT: PASEO DE VALENCIA LIFT STATION REFURBISHMENT
CONTRACT NO. 2011.028**

THIS AGREEMENT (the "Agreement") is dated as of _____, 2017, by and between CivilSource, An NV5 Company, 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."

RECITALS

ENGINEER proposes to provide services to MNWD in connection with the evaluation, design and construction support services for the Paseo de Valencia Lift Station Refurbishment project (the "Project"). The scope of work to be performed by ENGINEER under this Agreement is described in **Exhibit A** hereto, which is incorporated herein (the "Scope of Work").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

SECTION I - ENGINEERING SERVICES, AUTHORIZATION

Section 1.1 ENGINEER proposes to perform those services which are described in the Scope of Work. MNWD may request or ENGINEER may recommend, that ENGINEER perform work in addition to or different from that delineated in the original Scope of Work, or delete services from the Scope of Work. Upon MNWD's request for additional or changed work, ENGINEER shall provide a cost estimate and written description of the additional or changed work. Prior to any such addition, changes, or deletion to the Scope of Work, MNWD and ENGINEER shall negotiate an adjustment of the compensation and time for completion and shall execute a written addendum to this Agreement. Upon execution of each addendum, (i) the Scope of Work shall thereafter be as described in **Exhibit A**, respectively, as modified by the addendum and any previously executed addendum; and (ii) the time for completing the work shall be as set forth in the addendum. Following execution of any addendum, all terms and provisions of the Agreement, except as expressly modified by such addendum, 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 addendum covering the additional or changed work.

Section 1.2 ENGINEER agrees to complete the design work described in the Scope of Work no later than **March 7, 2018**. ENGINEER further agrees to complete all other work within the time periods set forth in the Scope of Work. Time is of the essence in this Agreement.

ENGINEER agrees to coordinate the work to ensure its timely completion and shall promptly notify MNWD of any anticipated delays or causes or casualties beyond ENGINEER'S control which may affect the work schedule. In the event the time for completing the Scope of Work 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

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pursuant to Section 1.1 and an executed addendum, in which to complete the work. ENGINEER shall not begin work on any services pursuant to this Agreement until receipt of MNWD'S written direction to proceed. Upon receipt of such notice, ENGINEER shall immediately commence the work described in **Exhibit A**.

Section 1.3 ENGINEER'S civil engineer, duly licensed in the State of California, who shall be the Principal in Charge of work, is Amy Amirani.

As part of the Project, ENGINEER intends to subcontract certain services for the Project. Separate subcontracts may be entered into between ENGINEER and the subconsultants listed in **Exhibit B** hereto. Any additional subconsultants ENGINEER proposes to use are subject to prior written approval by MNWD.

Without prior written approval of MNWD, ENGINEER will not make any changes in ENGINEER'S Principal in Charge, in consultants, in outside labor arrangements, or associations or joint ventures which are required to accomplish any part of the Scope of Work. ENGINEER is responsible to MNWD for the acts and omissions of its subcontractors as it is for persons directly employed by ENGINEER. Nothing contained in this Agreement creates any contractual relationship between any subconsultant/subcontractor and MNWD. ENGINEER shall not allow any subconsultant/subcontractor to commence work or services under any subcontract until all insurance required of ENGINEER has been obtained for the subconsultant/subcontractor.

Section 1.4 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 work to be performed under this Agreement.

Engineer will furnish to MNWD the agreed upon number of reports and supporting documents.

These instruments of service are furnished for MNWD's use in connection with the project or work provided for in this Agreement and shall become MNWD's property upon receipt. All documents and information generated by Engineer and any of Engineer's subcontractors pursuant to this Agreement shall remain confidential and shall not be copied, distributed, or otherwise provided or referenced by Engineer or Engineer's subcontractors to any third parties other than with MNWD's written consent, or as compelled by order of court.

All original drawings and other documents, including detailed calculations developed for the Project shall, upon payment in full for the services described in this Agreement or as otherwise provided in SECTION V herein, be furnished to and become the property of MNWD.

Engineer may retain a copy of all reports and documents for their files.

SECTION II - ENGINEERING FEES

Section 2.1 In consideration for providing the engineering services referred to in SECTION I herein, MNWD agrees to compensate ENGINEER on an hourly rate basis, with a not-to-exceed maximum amount of **One Hundred Nineteen Thousand One Hundred Thirty Dollars (\$119,130)** (which maximum amount is inclusive of 'labor costs' and 'direct costs', as further discussed below). The breakdown of the fee and costs for the Project is attached hereto as **Exhibit C** which is incorporated herein. Compensation shall be on an hourly rate basis for labor costs as defined herein below in Section 2.2 plus 100% of the reasonable direct costs as

defined below in Section 2.3.

Section 2.2 Labor costs shall be the total number of hours worked on the job by each employee multiplied by the applicable hourly billing rate. The Fee Schedule set forth in **Exhibit D** attached hereto and incorporated herein sets forth the current billing rates of ENGINEER.

Section 2.3 Reasonable direct costs shall include those costs as described in the Scope of Work and listed in **Exhibit C**.

Section 2.4 Monthly progress payments will be made based on submittal of invoices by ENGINEER. Invoices will include the number of hours worked by various labor categories, the hourly billing rate per individual, and the total amount due. Only one bill per month shall be submitted by ENGINEER, showing invoices for ENGINEER and each subconsultant utilized during the monthly billing period.

SECTION III - WARRANTY

Section 3.1 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.

Section 3.2 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.

Section 3.3 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 3.4 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 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 IV - INSURANCE AND INDEMNIFICATION

Section 4.1 Professional Liability Insurance. ENGINEER and each of its sub-consultants/subcontractors 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 date of this Agreement.
- (b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of this Agreement or the services hereunder.
- (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 five (5) 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 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 under this Agreement.

Section 4.2 General/ Automobile Liability Insurance. ENGINEER and each of its sub-consultants/subcontractors 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 sub-consultants/subcontractors, 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 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 form acceptable to MNWD.

Section 4.3 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/subcontractors 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 4.4 Requirements of All Policies. All policies of insurance required under this Section IV 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 subconsultant's/subcontractor's) 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 4.5 Indemnity.

(a) To the fullest extent permitted by law, ENGINEER shall defend (with counsel reasonably approved by the City), indemnify and hold MNWD, City of Laguna Niguel, City of Mission Viejo, and their respective 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. ENGINEER'S obligation to indemnify shall not be restricted to insurance proceeds, if any, received by MNWD, its officials, officers, employees, agents or City designated volunteers.

(b) In any and all claims against the indemnified parties by any employee of the ENGINEER, 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

#6.

limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the ENGINEER, or any subcontractor, or other person under workers' compensation acts, disability benefit acts, or other employee acts.

(c) 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 V – CALIFORNIA LABOR CODE REQUIREMENTS

ENGINEER is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), 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 and to require its consultants to fully comply with such Prevailing Wage Laws. The Director of the Department of Industrial Relations has opined that certain geotechnical and related services are subject to the payment of prevailing wages and it shall be incumbent upon the ENGINEER to determine whether the Prevailing Wage Laws are applicable to the services and to comply with the Prevailing Wage Laws, if applicable. MNWD shall provide ENGINEER with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. ENGINEER shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the ENGINEER'S principal place of business and at the Project site. 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 of the ENGINEER or its consultants to comply with the Prevailing Wage Laws.

SECTION VI - TERMINATION OR ABANDONMENT

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 Work 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.

ENGINEER shall not perform further work 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 II of this Agreement.

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 completed and/or being suspended or abandoned.

SECTION VII - GENERAL

Section 7.1 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 7.2 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.

Section 7.3 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 7.4 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: Rod Woods, Assistant Director of Engineering
Moulton Niguel Water District
27500 La Paz Road
Laguna Niguel, CA 92677-3489

To ENGINEER - Attn: Amy Amirani, Principal-in-Charge
CivilSource, An NV5 Company
9890 Irvine Center Drive
Irvine, CA 92618

Section 7.5 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 7.6 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 7.7 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

#6.

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 7.8 It is expressly understood and agreed that ENGINEER is an independent contractor and not an employee of MNWD while engaged in carrying out this Agreement. 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.

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.

Section 7.9 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 7.10 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 _____, _____.

Moulton Niguel Water District

By: _____
Joone Lopez
General Manager

CivilSource, An NV5 Company

By: _____
Title: _____



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** April 17, 2017

FROM: Rod Woods, Assistant Director of Engineering
Mark Mountford, Principal Engineer

SUBJECT: Fats, Oils, and Grease (FOG) Consulting Services

DIVISION: District-wide

SUMMARY:

Issue: District staff issued a Request for Proposals (RFP) for ongoing FOG Consulting Services.

Recommendation: It is recommended that the Board of Directors approve the Agreement for FOG Consulting Services with Environmental Compliance Inspection Services (ECIS) for an amount not-to-exceed \$390,000 and a 3-year contract term with an option of two (2) one-year extensions; and authorize the General Manager or designees to execute the agreement.

Fiscal Impact: Sufficient funds have been budgeted in the FY 2017-18 operating budget for the proposed Agreement. Future years will be budgeted appropriately in support of the Agreement.

Reviewed by Legal: Yes

BACKGROUND:

The District's Sewer System Management Plan (SSMP) was adopted in 2010 (and revised in 2013) as required by the State Water Resources Control Board. It requires the District to perform monthly inspections of approximately 350 grease control devices. Additionally, the Fats, Oils, and Grease (FOG) Program requires the District to perform annual inspections of approximately 480 food service establishments within the District, to review compliance with kitchen Best Management Practices (BMPs). These services are critical to protect the District's wastewater collection system from potential blockages by ensuring appropriate grease protection measures are in place at food service establishments.

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Fats, Oils, and Grease (FOG) Consulting Services

April 17, 2107

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The FOG Program consulting services contract requires a qualified firm that has expertise in grease control device requirements and BMPs, an ability to maintain a strong working relationship with the District's existing restaurants, and the ability to represent the District in a professional and courteous manner while remaining steadfast in the execution of District Policy.

DISCUSSION:

The District issued a Request for Proposals (RFP) for FOG Consulting Services to the following three environmental consulting firms:

- EEC Environmental
- Environmental Compliance Inspection Services (ECIS)
- Geosyntec

On March 23, 2017, the District received two comprehensive proposals, from EEC Environmental and ECIS. Geosyntec communicated to the District that, due to the level of effort presented in the scope of work, they do not feel they could provide a level of service required for this project at this time. Staff carefully evaluated proposals received based on various factors to identify the consultant most responsive to the District's needs. The factors considered in the proposal review included: proposal completeness and quality, understanding of District needs over the next three years, technical qualifications of key personnel, cost, and relevant experience and past history.

Table 1 summarizes the cost of administering comprehensive FOG program management services, assuming 500 monthly device inspections, and 650 total BMP food service establishment (FSE) inspections.

Table 1 FOG Consulting Services Estimated Annual Program Cost				
Consultant	Administrative Services	Grease Control Device Inspections	FSE BMP Inspections	Total
ECIS	\$0	\$90,000	\$32,500	\$122,500
EEC Environmental	\$25,130	\$241,745	\$38,370	\$305,245

Staff concluded that ECIS was the most responsive to the District's needs, and provided the best overall value to the District. The primary reasons for selection of ECIS as the most responsive were:

- Overall program cost.
- No invoiced charges proposed for a number of administrative support functions that the District currently engages ECIS on, including: device

Fats, Oils, and Grease (FOG) Consulting Services

April 17, 2107

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installation pre- and post-inspection, plan check support, manufacturer and technology discussions, changes in industry standards and policy change recommendations.

- Satisfaction with the current level of service.

Staff is recommending a new a 3-year contract term with an option of two (2) one-year extensions. ECIS would charge the District \$90,000 per year for Grease Control Device Inspections and \$32,500 per year for Best Management Practices Inspections for a total fiscal year commitment of \$122,500, based on anticipated level of effort identified above. As actual level-of-effort may vary, staff proposes to establish a not-to-exceed contract for \$130,000 annually to cover any increase in food service establishments, and additional level-of-effort needed.

Attachment: Agreement for FOG Consulting Services

**AGREEMENT FOR CONSULTING SERVICES BETWEEN
MOULTON NIGUEL WATER DISTRICT AND
ENVIRONMENTAL COMPLIANCE INSPECTION SERVICES
MNWD PROJECT: FOG CONSULTING SERVICES
CONTRACT NO. 2017-18.004**

THIS AGREEMENT (the "Agreement") is dated as of _____, _____, by and between ENVIRONMENTAL COMPLIANCE INSPECTION SERVICES, hereinafter referred to as the "CONSULTANT" and Moulton Niguel Water District hereinafter referred to as "MNWD," and provides for the furnishing of consulting services to MNWD by CONSULTANT. MNWD and CONSULTANT may sometimes be referred to in this Agreement individually as "party" and together as "parties."

RECITALS

CONSULTANT proposes to provide services to MNWD in connection with the support of the District's Fats, Oils and Grease (FOG) Control Program (the "Project"). The scope of work to be performed by CONSULTANT under this Agreement is described in **Exhibit A** hereto, which is incorporated herein (the "Scope of Work").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

SECTION I - CONSULTING SERVICES, AUTHORIZATION

Section 1.1 CONSULTANT proposes to perform those services which are described in the Scope of Work. MNWD may request or CONSULTANT may recommend, that CONSULTANT perform work in addition to or different from that delineated in the original Scope of Work, or delete services from the Scope of Work. Upon MNWD's request for additional or changed work, CONSULTANT shall provide a cost estimate and written description of the additional or changed work. Prior to any such addition, changes, or deletion to the Scope of Work, MNWD and CONSULTANT shall negotiate an adjustment of the compensation and time for completion and shall execute a written addendum to this Agreement. Upon execution of each addendum, (i) the Scope of Work shall thereafter be as described in **Exhibit A**, respectively, as modified by the addendum and any previously executed addendum; and (ii) the time for completing the work shall be as set forth in the addendum. Following execution of any addendum, all terms and provisions of the Agreement, except as expressly modified by such addendum, 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 addendum covering the additional or changed work.

Section 1.2 CONSULTANT agrees to perform the work described in the Scope of Work.

CONSULTANT agrees to coordinate the work to ensure its timely completion and shall promptly notify MNWD of any anticipated delays or causes or casualties beyond CONSULTANT'S control which may affect the work schedule. CONSULTANT shall not begin work on any services pursuant to this Agreement until receipt of MNWD'S written direction to proceed. Upon receipt

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of such notice, CONSULTANT shall immediately commence the work described in **Exhibit A**.

Section 1.3 CONSULTANT'S Principal in Charge of work is Jon Kinley.

As part of the Project, CONSULTANT intends to subcontract certain services for the Project. Separate subcontracts may be entered into between CONSULTANT and the subconsultants listed in **Exhibit B** hereto. Any additional subconsultants CONSULTANT proposes to use are subject to prior written approval by MNWD.

Without prior written approval of MNWD, CONSULTANT will not make any changes in CONSULTANT'S Principal in Charge, in consultants, in outside labor arrangements, or associations or joint ventures which are required to accomplish any part of the Scope of Work. CONSULTANT is responsible to MNWD for the acts and omissions of its subcontractors as it is for persons directly employed by CONSULTANT. Nothing contained in this Agreement creates any contractual relationship between any subconsultant/subcontractor and MNWD. CONSULTANT shall not allow any subconsultant/subcontractor to commence work or services under any subcontract until all insurance required of CONSULTANT has been obtained for the subconsultant/subcontractor.

Section 1.4 MNWD shall make available to CONSULTANT 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 CONSULTANT and relating to the work to be performed under this Agreement.

CONSULTANT will furnish to MNWD the agreed upon number of reports and supporting documents.

These instruments of service are furnished for MNWD's use in connection with the project or work provided for in this Agreement and shall become MNWD's property upon receipt. All documents and information generated by CONSULTANT and any of CONSULTANT's subcontractors pursuant to this Agreement shall remain confidential and shall not be copied, distributed, or otherwise provided or referenced by CONSULTANT or CONSULTANT's subcontractors to any third parties other than with MNWD's written consent, or as compelled by order of court.

All original drawings and other documents, including detailed calculations developed for the Project shall, upon payment in full for the services described in this Agreement or as otherwise provided in SECTION V herein, be furnished to and become the property of MNWD.

CONSULTANT may retain a copy of all reports and documents for their files.

SECTION II - CONSULTING FEES

Section 2.1 In consideration for providing the consulting services referred to in SECTION I herein, MNWD agrees to compensate CONSULTANT on an hourly and per Inspection rate basis, with a not-to-exceed maximum amount of Three Hundred and Ninety Thousand Dollars (\$390,000) (which maximum amount is inclusive of 'labor costs' and 'direct costs', as further discussed below). The breakdown of the fee and costs for the Project is attached hereto as **Exhibit C** which is incorporated herein. Compensation shall be on an hourly or per Inspection rate basis for labor costs as defined herein below in Section 2.2 plus 100% of the reasonable direct costs as defined below in Section 2.3.

Section 2.2 Labor costs shall be the total number of hours worked on the job by each

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employee multiplied by the applicable hourly billing rate. Inspection costs shall be the total number of inspected manholes.

Section 2.3 Reasonable direct costs shall include those costs as described in the Scope of Work and listed in Exhibit C.

Section 2.4 Monthly progress payments will be made based on submittal of invoices by CONSULTANT. Invoices will include the number of hours worked by various labor categories, the hourly billing rate per individual, and the total amount due, and/or the number of inspected manholes. Only one bill per month shall be submitted by CONSULTANT, showing invoices for CONSULTANT and each subconsultant utilized during the monthly billing period.

SECTION III - WARRANTY/DISCLAIMER

Section 3.1 CONSULTANT is employed to render consulting services pursuant to this Agreement only, and any payments made to CONSULTANT are compensation solely for such services as it may render and recommendations it may make in carrying out the work.

Section 3.2 In performing services under this Agreement, CONSULTANT 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.

Section 3.3 CONSULTANT'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 3.4 If the Project results in construction of any kind, the parties agree MNWD and CONSULTANT 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 CONSULTANT, such indemnity to be in accordance with MNWD's construction documents. MNWD and CONSULTANT 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.

CONSULTANT 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 CONSULTANT are intended solely for the benefit of MNWD. Nothing contained herein shall confer any rights upon or create any duties on the part of CONSULTANT 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 IV - INSURANCE AND INDEMNIFICATION

Section 4.1 Professional Liability Insurance. CONSULTANT and each of its sub-
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consultants/subcontractors 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 date of this Agreement.
- (b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of this Agreement or the services hereunder.
- (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, CONSULTANT must provide extended reporting coverage for a minimum of five (5) years after completion of the services. MNWD shall have the right to exercise at the CONSULTANT's cost any extended reporting provisions of the policy should the CONSULTANT 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 under this Agreement.

Section 4.2 General/ Automobile Liability Insurance. CONSULTANT and each of its sub-consultants/subcontractors 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 CONSULTANT and its sub-consultants/subcontractors, 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 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 form acceptable to MNWD.

Section 4.3 Worker's Compensation. By its signature hereunder, CONSULTANT 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 CONSULTANT will comply with such provisions before commencing the performance of work under this Agreement. CONSULTANT and subconsultants/subcontractors 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 4.4 Requirements of All Policies. All policies of insurance required under this Section
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4 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. CONSULTANT 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 CONSULTANT's (and its subconsultant's/subcontractor's) 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 CONSULTANT 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 4.5 Indemnity.

(a) To the fullest extent permitted by law, CONSULTANT shall defend (with counsel reasonably approved by the City), indemnify and hold MNWD, City of Laguna Niguel, City of Mission Viejo, City of Aliso Viejo, City of Laguna Hills, City of Dana Point, City of San Juan Capistrano, and their respective 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 CONSULTANT, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the CONSULTANT'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 CONSULTANT'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 CONSULTANT. CONSULTANT'S obligation to indemnify shall not be restricted to insurance proceeds, if any, received by MNWD, its officials, officers, employees, agents or City designated volunteers.

(b) In any and all claims against the indemnified parties by any employee of the CONSULTANT, 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

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benefits payable by or for the CONSULTANT, or any subcontractor, or other person under workers' compensation acts, disability benefit acts, or other employee acts.

(c) The CONSULTANT'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 CONSULTANT hereunder.

SECTION V – CALIFORNIA LABOR CODE REQUIREMENTS

CONSULTANT is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), 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, CONSULTANT agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. The Director of the Department of Industrial Relations has opined that certain geotechnical and related services are subject to the payment of prevailing wages and it shall be incumbent upon the CONSULTANT to determine whether the Prevailing Wage Laws are applicable to the services and to comply with the Prevailing Wage Laws, if applicable. If applicable, MNWD shall provide CONSULTANT with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. CONSULTANT shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the CONSULTANT's principal place of business and at the Project site. CONSULTANT 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 of the CONSULTANT or its subconsultants to comply with the Prevailing Wage Laws.

SECTION VI - TERM

Section 6.1 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 VI herein. The Agreement will have the option of two (2) one-year extensions, at the discretion of the District.

SECTION VII - TERMINATION OR ABANDONMENT

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 CONSULTANT of any or all services listed in the Scope of Work under this Agreement by providing written notice to CONSULTANT at least five (5) working days prior to the date on which MNWD wishes to suspend; provided, upon receipt of such notice, CONSULTANT shall immediately suspend any work or services hereunder, unless otherwise instructed by MNWD in such notice.

CONSULTANT shall not perform further work under this Agreement after the effective date of 28258.00400\29611379.1

suspension until receipt of written notice from MNWD to resume performance. MNWD and CONSULTANT agree that in the event MNWD suspends or terminates performance by CONSULTANT for any cause other than the intentional or negligent error or omission of CONSULTANT, CONSULTANT shall be entitled to payment of compensation incurred prior to the effective date of the suspension or termination, as determined under SECTION II of this Agreement.

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 completed and/or being suspended or abandoned.

SECTION VIII - GENERAL

Section 8.1 CONSULTANT 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 consulting services hereunder, or which would impact its objectivity in performing such services hereunder.

Section 8.2 This Agreement represents the entire understanding of MNWD and CONSULTANT 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.

Section 8.3 Books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this Agreement shall be maintained by CONSULTANT 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 8.4 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: Rod Woods, Assistant Director of Engineering and Operations
Moulton Niguel Water District
27500 La Paz Road
Laguna Niguel, CA 92677-3489

To CONSULTANT - Attn: Jon C Kinley, President
Environmental Compliance Inspection Services
26 Dauphin
Dana Point, CA 92629

Section 8.5 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.

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Section 8.6 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 8.7 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 8.8 It is expressly understood and agreed that CONSULTANT is an independent contractor and not an employee of MNWD while engaged in carrying out this Agreement. CONSULTANT warrants that it will not represent, at any time or in any manner, that CONSULTANT is an employee or agent of MNWD. CONSULTANT shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of MNWD.

The person signing this Agreement on behalf of each party hereto represents he/she has authority to sign on behalf of, respectively, MNWD or CONSULTANT.

Section 8.9 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 CONSULTANT without prior written consent of MNWD.

Section 8.10 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.

Moulton Niguel Water District

By: _____
Joone Lopez
General Manager

CONSULTANT – ENVIRONMENTAL
COMPLIANCE INSPECTION SERVICES

By: _____
Title: _____

Exhibit A:
Scope of Work

#7.



ENVIRONMENTAL COMPLIANCE INSPECTION SERVICES

Source Control Solutions

Date: March 23, 2017

To: Mr. Mark Mountford
Principal Engineer
Moulton Niguel Water District
26161 Gordon Road
Laguna Hills, California 92653

Re: Proposal to Provide Fats, Oils, and Grease (FOG) Consulting Services

Dear Mr. Mountford:

Environmental Compliance Inspection Services (ECIS) is pleased to present this proposal to provide comprehensive FOG Program Management Services to the Moulton Niguel Water District.

ECIS believes it is very qualified to provide these services given its nearly 16 years of past performance with MNWD. ECIS was the original provider of these services many years ago when MNWD was facing ever changing sewer regulations, and has continued to provide these and other related services up until the present.

ECIS has reviewed the proposal and scope of work. ECIS is confident we are uniquely suited to continue to offer the services requested in the proposal.

Thank you for the opportunity, please contact me anytime with any questions or comments.

Respectfully,

Jon C Kinley
President
ECIS



ENVIRONMENTAL COMPLIANCE INSPECTION SERVICES

Source Control Solutions

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Appendix A Insurance Certificate



ENVIRONMENTAL COMPLIANCE INSPECTION SERVICES

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A. COMPANY

Environmental Compliance Inspection Services (ECIS) is pleased to present this proposal to the Moulton Niguel Water District with the goal of continuing to provide a comprehensive Fats-Oils-Grease (FOG) Program. ECIS was the initial design and implementation contractor as MNWD developed its FOG Ordinance beginning in 2001. It has been a pleasure to work with MNWD for well over a decade. We believe our past working relationship with MNWD, along with our excellent working knowledge of the sewer system and relationship with MNWD staff, coupled with our long standing relationship with the restaurant community it serves will continue to be an asset to the district. ECIS has continued to remain flexible to the districts needs over the years as we implemented changes in response to the ever changing State Wastewater Discharge Requirements and the Sewer System Management Plan.

1.0 SERVICES PROVIDED

ECIS services include, but are not limited to, providing a comprehensive FOG Program with services including Grease Control Device Inspections, Grease Best Management Practices Inspections, New Grease Control Device Installation Inspections, FSE-FOG Classification inspections, onsite pre-construction meetings, public outreach and education and enforcement and support for the overall FOG Program.

SECTION B - SCOPE

1.0 Project Administration/Management

ECIS currently manages FOG Programs for many South Orange County cities and water/sewer districts. Having also been the initial FOG Program designer and implementer of their FOG Ordinances, ECIS is able to draw from other agencies/cities experience and bring innovative ideas and concepts to the on-going implementation of the MNWD FOG Program as well.

ECIS will provide the following services as required:

1. FOG Program Management including collection, organization and management of data.
2. Report and inspection results summarization.
3. Database management and project coordination with District staff.
4. Manage inspection schedules for GCDI and BMP inspections.
5. Monitoring and enforcement of inspections including New Device Installation inspections.
6. Issuance and follow up of Notices of Non Compliance.
7. Conduct meetings with District staff as needed in field/provide field support.
8. Provide monthly reports and updates to District FOG Program Manager.
9. Provide consultation and expertise to District FOG Program Manager.



ENVIRONMENTAL COMPLIANCE INSPECTION SERVICES

Source Control Solutions

10. Provide as needed consultation to District Board at meetings.
11. Maintain GCDI/BMP database inventories and information.
12. Manage all New Device Installation Inspections.
13. Meet with City staff if needed to assist district with ordinance requirements.
14. Provide materials to FSE's as needed in coordination with GCDI/BMP inspections.

2.0 New Installation Inspections

ECIS is currently notified by district staff through the Will-Serve letter process of any/all new grease collection device installations. This was implemented by ECIS in response to the district utilizing in house staff to provide FOG Plan Review for all new/remodeling or Tenant Improvement (TI) plans received by the district. Additionally it was ECIS that provided the currently used Gravity Grease Interceptor Standard Drawing and trained district staff initially in the FOG Plan Review process recognizing that the five cities currently serviced by MNWD had historically not included MNWD in the plans review process. This resulted in decades of improperly sized grease control devices being approved by city staff, and in some cases, no grease control devices designed to help protect district sewer lines and structures were installed. ECIS recognized this gap early on and assisted the district in notifying city staff that the district had legal ownership and control of the sewer and was charged with its protection, thereby establishing MNWD on the plans route sheet at all five cities that notified applicants building or remodeling existing restaurants that MNWD was to be given plans for review.

This service alone has been responsible for MNWD adding a large number of properly sized Grease Control Devices throughout its sewer collection system over the years. Using an average number of 5 devices installed per year the district has seen approximately 80 devices installed in the 16 years of ECIS providing its FOG Program services. In 2009 the Uniform Plumbing Code (UPC) underwent a large overhaul pertaining to the sizing and classification of grease control devices. ECIS worked with MNWD staff during this process and assisted in FOG Ordinance wording changes, device effectiveness consultation and recommendation and also with evaluation of new and emerging grease control technologies including the use of chemical/biological additives.

ECIS also worked with the OCHCA (Orange County Health Care Agency) to adopt HGI installation parameters in regards to where these devices are allowed to be installed by OCHCA. ECIS assisted in training MNWD staff in regards to these device installations to ensure that MNWD device location approval did not conflict with OCHCA requirements as there are certain locations within the FSE that these devices have location prohibitions.

Over the years ECIS has notified MNWD of many FSE's that began installation of their grease control device without properly notifying MNWD. This has resulted in MNWD receiving the proper plans and the correct installation of the Grease Control Device.

From the onset of ECIS performing grease control device installations there has not been a fee for this service. It is included as a value-added inspection. There is also no fee for ECIS meeting on-site with any contractor for pre-construction meeting or with any city staff if the need arises.

ECIS will provide the following services as required for this task:



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For GGI (Gravity Grease Interceptor) installations:

Pre-Backfill inspection.

1. Inspect for correct size-model-location as per approved MNWD plan.
2. Inspect for proper plumbing as specified on MNWD GGI standard drawing.
3. Inspect for proper installation of concrete grade rings-manhole covers per drawing.
4. Inspect for proper compaction/bedding requirements if required.

Post-Backfill/Final inspection.

1. Inspect for proper final grade of inspection manholes and required concrete pad per drawing.
2. Sign off on city job inspection card and notify MNWD contact that GGI has been finalized.

For HGI (Hydro-Mechanical Grease Interceptor) installations:

Pre-Backfill inspection.

1. Inspect for correct size-model-location per approved MNWD and OCHCA (Orange County Health Care Agency) plans.
2. Inspect for proper plumbing as per approved MNWD plan and specifically for the installation of the UPC required vented flow control device.
3. Inspect for proper vault installation for HGI if located in a vault.
4. Sign off on city job inspection card and notify MNWD contact that HGI has been finalized.

3.0 Grease Control Device Inspections

ECIS has been inspecting both GGI's and HGI's for MNWD since the inception of the FOG Program in 2001 and since first establishing the FOG Program database has been self-regulating the number of devices inspected. This self-regulation is based on years of inspection experience and thorough knowledge of several factors including the type of FSE, its normal operations and procedures, and past inspections results history. Currently there are more lids on the FSE database than are actually inspected, and this number rises and falls over time as FSE's close or new FSE's come on-line. The fee for this service has not changed in 16 years of service.

ECIS pioneered the practice of color coding the FSE's on its FOG database with the goal in mind to make it easier to classify the FSE and determine whether or not it needed to be inspected during the annual FSE-Grease Best Management Practices Inspections discussed later in this proposal. The colors break the FSE's down into four basic categories. Green colored FSE's are those with a properly sized and type underground outdoor Gravity Grease Interceptor. Blue colored FSE's are those with a smaller either underground or above ground Hydro-Mechanical Grease Interceptor. Red colored FSE's are those that discharge negligible to no FOG and do not require a grease control device. Yellow colored FSE's are those that need a grease control device and currently do not have one. Historically the yellow colored FSE's on the FOG Database have been the biggest dischargers



ENVIRONMENTAL COMPLIANCE INSPECTION SERVICES

Source Control Solutions

of FOG into MNWD lines and, at the recommendation of ECIS, are also charged the highest FOG Permit Fee by MNWD. ECIS also recommended and helped implement the use of the FSE Fee Tier currently used by MNWD for its FOG Permits.

All ECIS Grease Control Device Inspections are thorough to support any potential enforcement event(s).

ECIS will provide the following services as required for this task:

1. Conduct monthly on-site physical inspections of each Grease Control Device.
2. Determine amount of accumulated FOG in the device and inspect for overall device operation and performance including the inspection of all internal plastic piping, removable baffle(s) (HGI only) within the device.
3. Review maintenance logs and record the last known date of pumping and the pumping service provider.
4. Review any pumping contractor receipts.
5. Document violations and issue Notice of Non Compliance if needed.
6. Discuss violations/compliance requirements/return inspection scheduling issues etc.. with FSE contact.
7. If needed photographic/video evidence is obtained.
8. (Optional with no fee) If needed to assist MNWD track down any issues ECIS can also check device Ph to ensure effluent discharge limit prohibitions are in order.
9. On occasion a metal manhole lid (GGI only) is cracked or damaged by pumping contractor or other reason and ECIS always notifies FSE contact so they can have issue repaired. ECIS is prepared to give the FSE information on where/how to obtain a new manhole cover. This makes for good relations with MNWD and the restaurant community.

4.0 Best Management Practices (BMP) Inspections

ECIS has conducted tens of thousands of FSE-Grease Best Management Practices inspections and understands the importance of properly educating each FSE on implementing proper BMP's. Since the FSE-Grease Best Management Practices Inspections Program was first implemented in 2011 with former FOG Program Manager Brad Bruington, ECIS has conducted over 2000 BMP inspections for MNWD alone. ECIS knows the restaurant community serviced by MNWD very well and has developed a relationship with them resulting in tough but fair inspections to better protect MNWD sewer lines. As briefly mentioned previously, ECIS pioneered many aspects of the FSE Grease BMP inspections now used throughout the state. ECIS was involved with all aspects of the Orange County and OCS D model FOG Ordinances years back when the Statewide WDR/FOG rules were being implemented and developed. Our history gives us unique and unmatched expertise. Additionally ECIS recently assisted MNWD with the design of a restaurant handout to specifically address the growing concern of IKG (Inedible Kitchen Grease) theft. These handouts are given out as needed to each FSE on an as needed basis and are included in the FOG Binder.

ECIS will provide the following services as required for this task:



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1. Inspect that the MNWD FOG Program binder is onsite and available for inspection.
2. Inspect for the required removal of food grinder.
3. Inspect drain screens are installed/maintained in kitchen floor sinks.
4. Inspect for required posting of the “Drain is not a Dump” poster or other signage.
5. Inspect for required plate scraping practices.
6. Inspect for proper food waste disposal practices.
7. Inspect for the proper storage of used cooking oil (IKG).
8. Inspect for proper IKG disposal.
9. Inspect for proper Grease Control Device pumping documentation.
10. Inspect to ensure Employee Training has occurred.
11. Issuance and follow up of Notice of Non Compliance.

D. Team

**Jon Kinley
Project Manager**

Jon Kinley is the Founder and President of ECIS. Mr. Kinley has more than 20 years’ experience managing FOG/NPDES Programs.

Jon oversees all ECIS programs for its clients and is involved in all aspects of their management and operation. He provided recognized leadership and technical as well as field inspection experience during a national FOG research study for the Orange County Sanitation District and County of Orange and has previously administered the OCSD FOG Program. He is a member of the California Wastewater Environment Association (CWEA) and has held a Grade 1 Environmental Compliance Inspector certification with CWEA since 1998.

Experience

Project Manager, FOG Program Consulting and Implementation, Southern CA

1. Has provided FOG Program consultation and management for several municipalities and sewer districts throughout Orange County. Program design and implementation, FOG Ordinance development, permit and fee development, establishing grease control device sizing and installation criteria, inspection and enforcement procedures, database management, design and development of program manuals and FOG specific information for restaurants.
2. Managed and oversaw thousands of FSE inspections in support of FOG Ordinances and programs.
3. Managed issuance and follow-up of thousands of non-compliance and enforcement measures including tracking of all compliance verification activities.
4. Conducted hundreds of new grease control device Plan Reviews and onsite installation inspections.



ENVIRONMENTAL COMPLIANCE INSPECTION SERVICES

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5. Coordination of private/special sewer district FOG Program implementation with cities/agencies including detailed negotiations with city staff regarding FOG Plan Review and device installation and inspection.

6. Provided FOG Program support and technical program expertise for city council or sewer/water district staff/board meetings.

7. Routinely meets with sewer agency staff in field to provide technical expertise in the event of an SSO or other need.

Jon will continue to serve as the FOG Program Project Manager for this task.

E. References

Customer Name: South Coast Water District Contact: Mr. Joe McDivitt / Dir. Operations
Phone: 949-499-4555

ECIS designed, developed and implemented the current FOG Program with SCWD beginning in 2002. ECIS established the FSE inventory database and conducted all FSE-FOG Classification inspections in support of the database and subsequent additions to the FOG Program.

Beginning in 2008 ECIS implemented the current FSE-Grease Best Management Practices inspections program. ECIS provided overall program implementation and management with SCWD staff and also helped develop the FOG Binder/Poster/Training system and provided consultation at several stakeholder meetings during program launch. ECIS also instituted the current FOG Plan Review program component as part of the overall FOG Program

Customer Name: City of San Clemente Contact: Mr. Larry Brotman /Util. Supervisor
Phone: 949-361-8253

ECIS designed, developed and implemented the beginnings of the current FOG Program with CSC beginning in 2002. ECIS established the FSE inventory database and conducted all FSE-FOG Classification inspections in support of the database and subsequent additions to the FOG Program.

Beginning in 2004 ECIS implemented the current FSE-Grease Best Management Practices inspections program. ECIS provided overall program implementation and management with CSC staff and also helped develop the FOG Binder/Poster/Training system and instituted the current FOG Plan Review program component as part of the overall FOG Program.

Customer Name: City of Laguna Beach Contact: Mr. David Shissler/Dir. Water Quality
Phone: 949-497-0328



Source Control Solutions

ECIS designed, developed and implemented the current FOG Program with CLB beginning in 2002. ECIS established the FSE inventory database and conducted all FSE-FOG Classification inspections in support of the database and subsequent additions to the FOG Program.

Beginning in 2006 ECIS implemented the current FSE-Grease Best Management Practices inspections program. ECIS provided overall program implementation and management with CLB staff and also helped develop the FOG Binder/Poster/Training system and instituted the current FOG Plan Review program component as part of the overall FOG Program. ECIS also provided technical expertise and consultation for CLB during a past Notice of Violation it received from the San Diego Regional Water Quality Control Board that led to the implementation of the FOG Program.

F. Schedule

ECIS proposes to complete all necessary monthly Grease Control Device Inspections as needed, generally within the first two weeks of each month as it has been for the past 16 years and provide the monthly updated Excel format inspections database to the MNWD FOG Program Manager within a week of the inspections.

ECIS proposes to complete the annual FSE-Grease BMP inspections as needed as it has since 2011 normally between the months of April-June 30, and provide the updated annual Excel format inspections database to the MNWD FOG Program Manager.

G. Insurance – See Appendix A

H. Budget/Fee Estimate

Scope Item 2.1 – Administrative Services, as hourly labor cost.

Board meetings.....	\$75/Hr.
All other labor as described in Scope/Proposal is no charge and included in overall program cost.	
New Device Installation Inspection.....	(no charge)
Onsite/Offsite contractor/MNWD/City staff meeting.....	(no charge)
Scope Item 2.2 – Price per Inspected Manhole Lid.....\$15 per	
Scope Item 2.3 – Price per Inspected Business/FSE.....\$50 per	



ENVIRONMENTAL COMPLIANCE INSPECTION SERVICES

Source Control Solutions

APPENDIX A
INSURANCE CERTIFICATE



ENVIRONMENTAL COMPLIANCE INSPECTION SERVICES

Source Control Solutions



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/30/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Michael Rodgick 196 Technology Dr Ste B Irvine CA 92618-2433		CONTACT NAME: Mike PHONE (A/C, No, Ext): 949-753-9555 FAX (A/C, No): 949-753-9559 E-MAIL ADDRESS: mrodgick@farmersagent.com	
INSURED Jon Kinley DBA: Environmental Compliance Inspection Service 26 Dauphin Dana Point CA 92629		INSURER(S) AFFORDING COVERAGE INSURER A: Liberty Mutual - Ohio Security Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 24082	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			BKS 57739408	01/30/2017	01/30/2018	EACH OCCURRENCE \$ 2,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	Y				MED EXP (Any one person) \$ 5,000	
							PERSONAL & ADV INJURY \$ 2,000,000	
							GENERAL AGGREGATE \$ 4,000,000	
GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							PRODUCTS - COMPOP AGG \$ 4,000,000	
A	AUTOMOBILE LIABILITY			BKS 57739408	01/30/2017	01/30/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000	
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$	
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS	N				N	BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
							\$	
UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE							EACH OCCURRENCE \$	
DED RETENTION \$							AGGREGATE \$	
							\$	
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	N/A				WC STATUTORY LIMITS OTHER	
							E.L. EACH ACCIDENT \$	
							E.L. DISEASE - EA EMPLOYEE \$	
							E.L. DISEASE - POLICY LIMIT \$	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Moulton Niguel Water District (MNWD) its member agencies and each of their directors, officers, employees and representatives as additional insureds.

CERTIFICATE HOLDER Moulton Niguel Water District (MNWD) 34156 Del Obispo Street Dana Point CA 92629	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Michael Rodgick <small>Digitally signed by Michael Rodgick DN: cn=Michael Rodgick, o=ECIS, email=mrodgick@farmersagent.com, c=US Date: 2017.01.27 12:07:50 -0800</small>
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Exhibit B:
List of Subcontractors

None.

#7.

Exhibit C:
Project Fee Schedule

Board Meeting Attendance	\$75/Hr.
New Device Installation Inspection	No Charge
Onsite/Offsite Contractor/MNWD/City Staff Meeting	No Charge
Price per Inspected Manhole Lid	\$15 per
Price per Inspected Business/FSE	\$50 per



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** April 17, 2017

FROM: Rod Woods, Assistant Director of Engineering
Mark Mountford, Principal Engineer

SUBJECT: Consulting Services for Communications License Program

DIVISION: District-wide

SUMMARY:

Issue: District staff issued a Request for Proposals (RFP) for consulting services for the District’s Communications License Program.

Recommendation: It is recommended that the Board of Directors approve the Agreement for Communications License Program Consulting Services with ATS Communications for an amount not-to-exceed \$300,000 and a 3-year contract term with an option of two (2) one-year extensions; and authorize the General Manager or designee to execute the agreement.

Fiscal Impact: Sufficient funds have been budgeted in the FY 2017-18 operating budget for the proposed Agreement. Future years will be budgeted appropriately in support of the Agreement.

Reviewed by Legal: Yes

BACKGROUND:

The District developed the Communications License 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 that 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 (Policy) on March 15, 2012. In December 2015 and October 2016, the Board approved updates to the Policy.

#8.

Consulting Services for Communications License Program

April 17, 2017

Page 2 of 3

Since the Program began in the 1990s, the District's engineering staff has administered the Program, which included implementation of Board policy, point of contact with the existing or proposed cell carrier, plan check review of the construction documents, approval of new agreements or amendments, inspection of communication facility construction activities, and oversight of the monthly lease payments. The District's Program has grown to include 51 agreements distributed among 17 of the District's sites.

The number of projects that the cell carriers have proposed or are currently in process has remained high. Currently, staff has 43 active projects, in addition to regular activities. It is anticipated that twenty-eight new licenses will need to be renewed for existing facilities due to expiring leases. Historically, the District's level of professional services required has resulted in an annual budget of approximately \$90,000 annually.

DISCUSSION:

The District issued a Request for Proposals (RFP) for Communications License Program Consulting Services to the following three firms:

- ATS Communications
- Eukon Group
- Trillium Contracting Services

The RFP indicated a scope of work that includes assisting staff with new site builds, managing site modification and decommissioning projects, performing site audits for license compliance, performing rent audits, updating staff on industry trends and technology, recommending policy and procedure updates when applicable, and providing day to day communications with cell site carrier contacts.

On March 31, 2017, the District received two (2) proposals -- from ATS Communications and Eukon Group. Staff carefully evaluated proposals received based on various factors to identify the consultant most responsive to the District's needs. The factors considered in the proposal review included: understanding of District needs over the next three years, hourly rates and cost of services, commitment to perform the required work in a timely fashion, technical qualifications of key personnel, relevant experience, and past history.

Staff concluded that ATS Communications will provide the best overall value to the District. Staff is currently satisfied with services provided and the level of effort spent by ATS Communications in support of the program. They have proposed the same level of effort moving forward. The process has confirmed both the appropriate level of effort to support the program, and the competitiveness of ATS Communications proposed rates.

Staff is recommending a new a 3-year contract term with an option of two (2) one-year extensions. Based on previous levels of effort, staff proposes to establish a not-

Consulting Services for Communications License Program

April 17, 2017

Page **3** of **3**

to-exceed contract for \$100,000 annually, to support all Program requirements (\$90,000 expected level of effort with a \$10,000 contingency).

Attachment: Agreement for Communications License Program Consulting Services

**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES BETWEEN
MOULTON NIGUEL WATER DISTRICT AND
TELECOM GROUP PARTNERS CORP., DBA ATS COMMUNICATIONS
MNWD PROJECT: ON-CALL SERVICES FOR THE
MANAGEMENT OF THE DISTRICT'S COMMUNICATIONS LICENSE PROGRAM
CONTRACT NO. 2017-18.003**

THIS AGREEMENT (the "Agreement") is dated as of _____, 2017, by and between Telecom Group Partners Corp., A California Corporation, DBA ATS Communications, hereinafter referred to as the "CONSULTANT" and Moulton Niguel Water District hereinafter referred to as "MNWD," and provides for the furnishing of consulting services to MNWD by CONSULTANT. MNWD and CONSULTANT may sometimes be referred to in this Agreement individually as "party" and together as "parties."

RECITALS

CONSULTANT proposes to provide services to MNWD on an as-needed basis in connection with the support of the District's Communications License Program (the "Project"). The scope of work to be performed by CONSULTANT under this Agreement is described in **Exhibit A** hereto, which is incorporated herein (the "Scope of Work").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

SECTION I - CONSULTING SERVICES, AUTHORIZATION

Section 1.1 CONSULTANT proposes to perform those services which are described in the Scope of Work. MNWD may request or CONSULTANT may recommend, that CONSULTANT perform work in addition to or different from that delineated in the original Scope of Work, or delete services from the Scope of Work. Upon MNWD's request for additional or changed work, CONSULTANT shall provide a cost estimate and written description of the additional or changed work. Prior to any such addition, changes, or deletion to the Scope of Work, MNWD and CONSULTANT shall negotiate an adjustment of the compensation and time for completion and shall execute a written addendum to this Agreement. Upon execution of each addendum, (i) the Scope of Work shall thereafter be as described in **Exhibit A**, respectively, as modified by the addendum and any previously executed addendum; and (ii) the time for completing the work shall be as set forth in the addendum. Following execution of any addendum, all terms and provisions of the Agreement, except as expressly modified by such addendum, 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 addendum covering the additional or changed work.

Section 1.2 CONSULTANT agrees to perform the work described in the Scope of Work.

CONSULTANT agrees to coordinate the work to ensure its timely completion and shall promptly notify MNWD of any anticipated delays or causes or casualties beyond CONSULTANT'S control which may affect the work schedule. CONSULTANT shall not begin work on any services pursuant to this Agreement until receipt of MNWD'S written direction to proceed. Upon receipt of such notice, CONSULTANT shall immediately commence the work described in **Exhibit A**.

#8.

Section 1.3 CONSULTANT'S Principal in Charge of work is Anthony Ingegneri.

[IF APPLICABLE: As part of the Project, CONSULTANT intends to subcontract certain services for the Project. Separate subcontracts may be entered into between CONSULTANT and the subconsultants listed in Exhibit B hereto. Any additional subconsultants CONSULTANT proposes to use are subject to prior written approval by MNWD.]

Without prior written approval of MNWD, CONSULTANT will not make any changes in CONSULTANT'S Principal in Charge, in subconsultants, in outside labor arrangements, or associations or joint ventures which are required to accomplish any part of the Scope of Work. CONSULTANT is responsible to MNWD for the acts and omissions of its subcontractors as it is for persons directly employed by CONSULTANT. Nothing contained in this Agreement creates any contractual relationship between any subconsultant/subcontractor and MNWD. CONSULTANT shall not allow any subconsultant/subcontractor to commence work or services under any subcontract until all insurance required of CONSULTANT has been obtained for the subconsultant/subcontractor.

Section 1.4 MNWD shall make available to CONSULTANT at no cost all agreements and technical data in MNWD's possession relevant to the Program, including maps, past reports, prior studies, prior plan operating data, and other information reasonably required by CONSULTANT and relating to the work to be performed under this Agreement.

CONSULTANT will furnish to MNWD the agreed upon services, number of reports and supporting documents.

These documents are furnished for MNWD's use in connection with the project or work provided for in this Agreement and shall become MNWD's property upon receipt. All documents and information generated by CONSULTANT and any of CONSULTANT's subconsultants pursuant to this Agreement shall remain confidential and shall not be copied, distributed, or otherwise provided or referenced by CONSULTANT or CONSULTANT's subconsultants to any third parties other than with MNWD's prior written consent, or as compelled by order of court.

All original drawings and other documents, including detailed calculations developed for the Project shall, upon payment in full for the services described in this Agreement or as otherwise provided in SECTION V herein, be furnished to and become the property of MNWD.

CONSULTANT may retain a copy of all reports and documents for their files.

SECTION II - CONSULTING FEES

Section 2.1 In consideration for providing the consulting services referred to in SECTION I herein, MNWD agrees to compensate CONSULTANT on an hourly rate basis, with a not-to-exceed maximum amount of Three Hundred Thousand Dollars (\$300,000) (which maximum amount is inclusive of 'labor costs' and 'direct costs', as further discussed below). The breakdown of the fee and costs for the Project is attached hereto as Exhibit C which is incorporated herein. Compensation shall be on an hourly rate basis for labor costs as defined herein below in Section 2.2 plus 100% of the reasonable direct costs as defined below in Section 2.3.

Section 2.2 Labor costs shall be the total number of hours worked on the job by each employee multiplied by the applicable hourly billing rate.

Section 2.3 Reasonable direct costs shall include those costs as described in the Scope of

Work and listed in Exhibit C.

Section 2.4 Monthly payments will be made based on submittal of invoices by CONSULTANT. Invoices will include the number of hours worked by various labor categories, the hourly billing rate per individual, and the total amount due. Only one bill per month shall be submitted by CONSULTANT, showing invoices for CONSULTANT and each subconsultant utilized during the monthly billing period.

SECTION III - WARRANTY/DISCLAIMER

Section 3.1 CONSULTANT is retained to render consulting services pursuant to this Agreement only, and any payments made to CONSULTANT are compensation solely for such services as it may render and recommendations it may make in carrying out the work.

Section 3.2 In performing services under this Agreement, CONSULTANT 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.

Section 3.3 CONSULTANT'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 3.4 The services to be performed by CONSULTANT are intended solely for the benefit of MNWD. Nothing contained herein shall confer any rights upon or create any duties on the part of CONSULTANT 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 IV - INSURANCE AND INDEMNIFICATION

Section 4.1 Professional Liability Insurance. CONSULTANT and each of its sub-consultants/subcontractors 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 date of this Agreement.
- (b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of this Agreement or the services hereunder.
- (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, CONSULTANT must provide extended reporting coverage for a minimum of five (5) years after completion of the services. MNWD shall have the right to exercise at the CONSULTANT's cost any extended reporting provisions of the policy should the CONSULTANT cancel or not renew the coverage.

#8.

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

Section 4.2 General/Automobile Liability Insurance. CONSULTANT and each of its sub-consultants/subcontractors 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 CONSULTANT and its sub-consultants/subcontractors, 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 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 form acceptable to MNWD.

Section 4.3 Worker's Compensation. By its signature hereunder, CONSULTANT 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 CONSULTANT will comply with such provisions before commencing the performance of work under this Agreement. CONSULTANT and subconsultants/subcontractors 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 4.4 Requirements of All Policies. All policies of insurance required under this Section 4 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. CONSULTANT 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 CONSULTANT's (and its subconsultant's/subcontractor's) 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 CONSULTANT 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 4.5 Indemnity.

(a) To the fullest extent permitted by law, CONSULTANT shall defend (with counsel reasonably approved by MNWD), indemnify and hold MNWD and its respective 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 incidental to any alleged acts, errors or omissions, or willful misconduct of CONSULTANT, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the CONSULTANT'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 in connection with any Claim or in enforcing the indemnity herein provided. Notwithstanding the foregoing, to the extent CONSULTANT'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 CONSULTANT. CONSULTANT'S obligation to indemnify shall not be restricted to insurance proceeds, if any, received by MNWD, its officials, officers, employees, agents or City designated volunteers.

(b) In any and all claims against the indemnified parties by any employee of the CONSULTANT, 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 CONSULTANT, or any subcontractor, or other person under workers' compensation acts, disability benefit acts, or other employee acts.

(c) The CONSULTANT'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 CONSULTANT hereunder.

SECTION V – CALIFORNIA LABOR CODE REQUIREMENTS

CONSULTANT is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), 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, CONSULTANT agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. The Director of the Department of Industrial Relations has opined that certain geotechnical and related services are subject to the payment of prevailing wages and it shall be incumbent upon the CONSULTANT to determine whether the Prevailing Wage Laws are applicable to the services and to comply with the Prevailing Wage Laws, if applicable.

#8.

MNWD shall provide CONSULTANT with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. CONSULTANT shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the CONSULTANT's principal place of business and at the Project site. CONSULTANT 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 of the ENGINEER or its consultants to comply with the Prevailing Wage Laws.

SECTION VI - TERM

Section 6.1 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 VI herein. The Agreement will have the option of two (2) one-year extensions, at the discretion of the District.

SECTION VII - TERMINATION OR ABANDONMENT

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 CONSULTANT of any or all services listed in the Scope of Work under this Agreement by providing written notice to CONSULTANT at least five (5) working days prior to the date on which MNWD wishes to suspend; provided, upon receipt of such notice, CONSULTANT shall immediately suspend any work or services hereunder, unless otherwise instructed by MNWD in such notice.

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

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 completed and/or being suspended or abandoned.

SECTION VIII - GENERAL

Section 8.1 CONSULTANT 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 consulting services hereunder, or which would impact its objectivity in performing such services hereunder.

Section 8.2 This Agreement represents the entire understanding of MNWD and CONSULTANT 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.

Section 8.3 Books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this Agreement shall be maintained by CONSULTANT 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 8.4 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: Rod Woods, Assistant Director of Engineering and Operations
Moulton Niguel Water District
27500 La Paz Road
Laguna Niguel, CA 92677-3489

To CONSULTANT - Attn: Anthony Ingegneri, President
ATS Communications
28322 Driza
Mission Viejo, CA 92692

Section 8.5 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 8.6 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 8.7 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 8.8 It is expressly understood and agreed that CONSULTANT is an independent contractor and not an employee of MNWD while engaged in carrying out this Agreement. CONSULTANT warrants that it will not represent, at any time or in any manner, that CONSULTANT is an employee or agent of MNWD. CONSULTANT shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of MNWD.

The person signing this Agreement on behalf of each party hereto represents he/she has authority to sign on behalf of, respectively, MNWD or CONSULTANT.

Section 8.9 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 CONSULTANT without prior written consent of MNWD.

#8.

Section 8.10 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.

Moulton Niguel Water District

By: _____
Joone Lopez
General Manager

CONSULTANT – [insert name]

By: _____
Title: _____

Exhibit A:
Scope of Work

#8.

SCOPE OF WORK

Work shall consist of, but shall not be limited to, the following tasks:

2.1 *Primary/Ongoing Tasks*

1. *New Site Builds:* Act as the project lead on all proposed Licenses for new wireless facilities (New Site Builds – NSBs). As the project coordinator and point of contact, manage the NSB process from site application through site design, Leasing/Licensing negotiations to construction completion and be the liaison for the District.
2. *Manage site modification and decommissioning projects of wireless facilities on District properties:* Act as the District’s liaison and project coordinator and coordinate all proposed carrier site modifications to their existing wireless facilities on District property.
3. *Bi-monthly Status Meetings:* Coordinate and manage bi-monthly status meetings with the District. Provide agendas for each meeting one day in advance. Provide post-meeting action item list within one day following meeting.

2.2 *Secondary (Annual or As-Needed) Tasks*

1. *Site Audits and Lease/License Compliance Review:* Annually (or as needed) conduct site audits of all wireless communications facilities on District properties. Visit each District property to photograph and document each of the carriers’ wireless communications facilities. Review against existing leases/licenses for compliance. Report and recommend appropriate corrective action, when necessary.
2. *Rent Audits:* Conduct Rent Audits for each carriers’ wireless communications facility to insure proper rent payments have been made and carriers are current with the Terms of the Lease/License Agreements and/or subsequent Amendments. Negotiate rent recovery, when applicable.
3. *Advise and Update on Industry Trends:* update District staff on trends in the industry.

2.3 *Occasional Tasks*

1. *Periodic Recommendations for Policy and Procedure Updates:* Work with the District to evaluate existing Policies and Procedures or help develop a new or revised Policy and Procedure Guidelines for the development and ongoing management of wireless communications facilities on District property, based on changes in the industry.
2. *Periodic Recommendations on existing License Agreement and Amendment documents:* Use “best practices” consistent with other agencies, collaborate on modifying existing District Lease/License Agreements and Amendments templates in response to changes in the industry.
3. *Participate in staff meetings and public hearings:* At the District’s direction, conduct meetings with staff and track all activities related to new and existing wireless facilities on District property. Attend District Board Meetings from time to time to answer questions related to cell industry and practices.
4. *Market District Properties to the wireless service providers:* With approval of District, identify development opportunities at District sites, and market with wireless service

providers.

DELIVERABLES

Deliverables include the bi-monthly status meeting agendas and action item lists, covering new site builds, site modifications, decommissioning projects, and any other required deliverables.

Invoicing for billable consulting hours will be expected on a monthly basis, and will include a breakdown of each task as follows:

- Date
- Description of Task
- Staff Member Involved
- Total Billable Time
- Billing Rate
- Total Amount for Task

#8.

Exhibit B:
List of Subcontractors

None.

Exhibit C:
Project Fee Schedule

Tony Ingegneri, Principal in Charge	\$200/Hr.
William Lynch, Project Manager	\$95/Hr.



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** April 17, 2017
FROM: Rod Woods, Assistant Director of Engineering
SUBJECT: Quarterly Capital Improvement Program Report
DIVISION: District-wide

SUMMARY:

Issue: District staff is responsible for executing the Capital Improvement Program (CIP) as adopted by the Board of Directors. This quarterly report is for October, November, and December of Fiscal Year (FY) 2016-17.

Recommendation: Information item only.

Fiscal Impact: The fiscal impact for each project is presented to the Board of Directors on a project by project basis. The collective impact for FY 2016-17 is \$46,569,520, if fully expensed.

DISCUSSION:

The Moulton Niguel Water District (District) Board of Directors approved a FY 2016-17 budget in June 2016 (see Table 1). Several of the projects in this fiscal year budget, such as SOCWA, JRWSS, Plant 3A, SMWD Joint Projects, and the Baker Water Treatment Plant, are managed by other entities, with the District providing funding through a project agreement or a joint powers entity. For these projects, staff primarily assesses capital expenditures and reviews deliverables and invoices, but does not actively manage the projects. These projects total \$21.0 million for FY 2016-17 budget. The remainder of the budget, \$25.6 million, is executed by District staff. After completion of the second quarter of the fiscal year, approximately 72% of

#13.

Quarterly Capital Improvement Program Report
April 17, 2017
Page 2 of 3

CIP budget has been committed and 22% has been expended to date. Table 1 summarizes the expenditures and contractual obligations for the fiscal year.

Table 1 Adopted Budget by Fund Fiscal Year: July 2016 through June 2017			
Item/Fund	Fiscal Year Adopted Budget	Committed Contracts Through Second Quarter	Payments Through Second Quarter
Water Efficiency – Fund 6	\$950,990	\$950,990	\$33,840
Replacement and Refurbishment - Fund 7	\$13,257,897	\$10,317,868	\$2,143,557
SOCWA, SMWD, & JRWSS - Fund 7	\$13,886,528	\$13,891,502	\$3,790,647
Water Supply Reliability Projects - Fund 12	\$8,861,074	\$5,861,074	\$3,227,132
Planning and Construction - Fund 14	\$9,613,031	\$2,423,876	\$826,992
Total	\$46,569,520	\$33,445,310	\$10,022,168

Staff has prioritized CIP projects to maximize the resources available to effectively execute the projects. Table 2 lists the projects in the 10-year Capital Improvement Program and their implementation status (see attached).

During the second quarter of FY 2016-17, these major activities were performed within the Capital Improvement Program:

- Five projects were completed:
 - 2006.071 – Baker Pipeline Regional Treatment Plant
 - 2009.115 – San Juan Creek 30-inch Effluent Transmission Main
 - 2014.001 – Bear Brand Reservoir Recoating & Safety Improvements
 - 2014.010 – Aliso Village Recycled Water Extension
 - 2014.013 – Pradera 850 Zone Loop

- Five projects were awarded:
 - 2015.003 – Aliso Creek Lift Station Rehabilitation
 - 2015.012 – Paseo de Valencia 24-inch Pipeline Railroad Crossing Abandonment
 - 2015.008 – Linda Vista Drive Sewer Lining
 - 2015.010 – National Park and Other Miscellaneous Sewer Lining
 - 2016.016 – Plant 3A Flood Protection

- Three projects were advertised for bids:
 - 2015.008 – Linda Vista Drive Sewer Lining
 - 2015.010 – National Park and Other Miscellaneous Sewer Lining
 - 2015.009 – Lower Boundary Oak Lift Station Upgrade

- 23 projects are under construction.

- Design work continued on 15 additional projects.
 - Issued 5 task orders utilizing the On-Call Professional Engineering Services Agreements listed below. Table 3 summarizes the expenditures for the program.
 - 2016.012 – Del Avion Lift Station Grinders
 - 2016.020 – Service Entrance Replacements at Three Stations
 - 2009.010 – Mission Hospital Secondary Feed
 - 2015.008 & 2015.010 – Inspection Services for the Linda Vista Drive, National Park, and Other Miscellaneous Sewer Lining
 - OM16-17.065 – Easement Line Break 5 Peppertree Ave Fire Flow Analysis

Table 3 On-Call Professional Engineering Services Agreement Expenditure Summary through December 2016				
Consultant	Contracted Amount	Number of Task Orders Issued	Total Value of Task Orders	Remaining Contractual Amount
AKM Consulting Engineers	\$950,000	21	\$653,065	\$296,935
Lee & RO, Inc	\$950,000	21	\$699,337	\$250,663
Tetra Tech, Inc	\$700,000	20	\$500,000	\$200,000
Total	\$2,600,000	62	\$1,852,402	\$747,598

Attachment: Table 2 Quarterly CIP Report

TABLE 2
QUARTERLY CAPITAL IMPROVEMENT PROGRAM REPORT
MOULTON NIGUEL WATER DISTRICT
QUARTERLY PROJECT STATUS - SECOND QUARTER - OCTOBER THROUGH DECEMBER
FISCAL YEAR: JULY 2016 TO JUNE 2017

PROJECT NUMBER	FUND	PROJECT DESCRIPTION	TOTAL PROJECT AMOUNT	EXPENDED FROM INCEPTION TO DATE	FY 2016-17 ADOPTED BUDGET	FY 2016-17 EXPENDED TO DATE	ESTIMATED COMPLETION DATE
COMPLETED PROJECTS							
2006071	12	BAKER PIPELINE REGIONAL TREATMENT PLANT	\$37,300,000	\$36,270,467	\$4,073,511	\$3,043,454	Completed
2009115	7	SAN JUAN CREEK 30 EFFLUENT TM	\$4,226,054	\$3,510,479	\$2,211,063	\$1,015,526	Completed
2009115	7	SAN JUAN CREEK 30 EFFLUENT TM - SMWD REIMBURSEMENT	(\$1,213,027)	(\$887,460)	(\$1,213,027)	(\$807,690)	Reimbursement
2013002	7	MATHIS RW RESERVOIR RECOATING & SAFETY IMPROVEMENTS	\$1,036,415	\$840,821	\$51,637	\$0	Completed
2014001	7	BEAR BRAND RESERVOIR RECOATING & SAFETY IMPROVEMENTS	\$778,100	\$661,627	\$507,115	\$219,922	Completed
2014010	12	ALISO VILLAGE RW EXTENSION	\$227,175	\$208,564	\$108,438	\$81,657	Completed
2014011	12	RECYCLED WATER SYSTEM EXTENSION PROJECT	\$2,146,552	\$1,796,247	\$1,629,125	\$102,022	Completed
2014013	14	PRADERA 850 ZONE LOOP	\$812,000	\$566,280	\$759,899	\$506,767	Completed
Subtotal			\$45,313,269	\$42,967,023	\$8,127,760	\$4,161,657	
PROJECTS UNDER CONSTRUCTION							
2006038	7	REPLACE DIGITAL LINES WITH WIRELESS NETWORK	\$2,020,630	\$1,806,525	\$459,552	\$294,978	3/31/17
2011010	7	HILLARY PRS REPLACEMENT	\$332,144	\$42,096	\$422,161	\$4,663	9/30/17
2011012	7	LARGO PRS REPLACEMENT	\$385,652	\$42,743	\$421,826	\$4,663	9/30/17
2011015	7	WILKES PRS REPLACEMENT	\$334,953	\$48,027	\$421,958	\$10,433	9/30/17
2014002	7	DEL AVION LS AUX GENERATOR REPLACEMENT	\$576,090	\$63,644	\$573,266	\$6,910	9/30/17
2014005	7	UTILITY MAIN BREAKERS REPLACEMENTS	\$216,700	\$135,429	\$150,719	\$18,624	3/31/17
2015002	7	2015-16 VALVE REPLACEMENT	\$1,470,000	\$871,376	\$1,433,232	\$834,025	3/31/17
2015003	7	ALISO CREEK LS REHABILITATION	\$131,800	\$12,930	\$270,000	\$5,207	3/31/17
2015004	7	CROWN VALLEY RW RESERVOIRS 1 AND 2 RECOATING & SAFETY IMPROVEMENTS	\$1,845,435	\$189,469	\$1,600,000	\$181,266	6/30/17
2015008	7	LINDA VISTA DR SEWER LINING	\$105,348	\$21,793	\$450,000	\$12,994	3/31/17
2015009	7	LOWER BOUNDARY OAK LS UPGRADE	\$410,000	\$47,004	\$410,000	\$31,420	12/31/17
2015010	7	NATIONAL PARK AND OTHER MISC SEWER LINING	\$94,423	\$23,893	\$300,000	\$15,094	3/31/17
2015012	7	PASEO DE VALENCIA 24" RAILROAD CROSSING ABANDONMENT	\$128,440	\$21,905	\$175,000	\$12,475	6/30/17
2015017	14	FALL PROTECTION SYSTEM - PW RESERVOIRS	\$173,229	\$133,372	\$233,132	\$117,322	3/31/17
2015018	14	FALL PROTECTION SYSTEM - RW RESERVOIRS	\$32,516	\$13,965	\$40,000	\$12,184	3/31/17
2015019	6	AMI PHASE I - POTABLE IRRIG METERS	\$484,190	\$390,391	\$475,495	\$33,660	6/30/17
2015020	6	AMI PHASE I - RW IRRIG METERS	\$484,190	\$362,664	\$475,495	\$180	6/30/17
2015022	7	CROWN VALLEY PW RESERVOIR 3 RECOATING	\$284,310	\$4,330	\$350,000	\$2,610	6/30/17
2016004	7	CROWN VALLEY COMM. PARK RELO FOR LAGUNA NIGUEL - RW	\$149,545	\$0	\$208,000	\$0	6/30/17
2016005	7	CROWN VALLEY COMM. PARK RELO FOR LAGUNA NIGUEL - PW	\$111,070	\$0	\$117,000	\$0	6/30/17
2016010	12	FY 2016-17 RW RETROFITS	\$50,000	\$0	\$50,000	\$0	6/30/17
2016013	14	2016-17 NEW SYSTEM VALVES	\$100,000	\$46,100	\$100,000	\$46,100	6/30/17
2016016	14	PLANT 3A FLOOD PROTECTION	\$500,000	\$3,090	\$50,000	\$3,090	6/30/22
Subtotal			\$10,420,664	\$4,280,746	\$9,186,836	\$1,647,898	

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TABLE 2
QUARTERLY CAPITAL IMPROVEMENT PROGRAM REPORT
MOULTON NIGUEL WATER DISTRICT
QUARTERLY PROJECT STATUS - SECOND QUARTER - OCTOBER THROUGH DECEMBER
FISCAL YEAR: JULY 2016 TO JUNE 2017

PROJECT NUMBER	FUND	PROJECT DESCRIPTION	TOTAL PROJECT AMOUNT	EXPENDED	FY 2016-17 ADOPTED BUDGET	FY 2016-17 EXPENDED TO DATE	ESTIMATED COMPLETION DATE
				FROM INCEPTION TO DATE			
PROJECTS IN PROGRESS/UNDER DESIGN							
2011034	7	GIS VIEWER AND CONFIGURATION	\$60,000	\$0	\$60,000	\$0	6/30/17
2012024	7	UPPER SALADA LS AUX GENERATOR REPLACEMENT	\$850,000	\$57,193	\$400,000	\$9,079	9/30/18
2013004	7	REGIONAL LS FORCE MAIN REPLACEMENT	\$8,900,000	\$59,990	\$150,000	\$0	6/30/22
2014012	7	HIDDEN HILLS VILLAGE EASEMENT PIPELINE REHABILITATION	\$420,000	\$43,739	\$188,396	\$0	12/31/17
2014015	14	DISTRICT HEADQUARTERS	\$23,000,000	\$494,924	\$8,000,000	\$136,234	6/30/19
2015011	7	PALMS APTS EASEMENT PW LINE REPLACEMENT	\$480,000	\$14,065	\$480,000	\$6,675	9/30/17
2015013	7	2016-17 RESERVOIR MANAGEMENT SYSTEM REPLACEMENT	\$2,050,000	\$25,275	\$300,000	\$25,275	12/31/18
2015015	7	SADDLEBACK PS AUX PUMP & ENGINE REPLACEMENT	\$1,235,000	\$24,878	\$200,000	\$24,878	3/31/19
2016002	7	2016-17 VALVE REPLACEMENT	\$2,860,000	\$3,750	\$460,000	\$3,750	6/30/18
2016006	7	UPPER SALADA ELECTRICAL SWITCHGEAR REPLACEMENT	\$550,000	\$24,660	\$100,000	\$24,660	3/31/18
2016012	14	DEL AVION LIFT STATION GRINDERS	\$120,000	\$3,836	\$120,000	\$3,836	9/30/17
2016014	14	SADDLEBACK PS GENERATOR EMERGENCY CONNECTION	\$60,000	\$0	\$60,000	\$0	3/31/19
ubtotal			\$40,585,000	\$752,309	\$10,518,396	\$234,386	
ANTICIPATED							
009010	14	MISSION HOSPITAL SECONDARY FEED	\$400,000	\$1,460	\$80,000	\$1,460	12/31/17
2010018	7	MATHIS -OSO BY-PASS (RECORD DRAWINGS)		\$3,550	\$5,000	\$2,823	Completed
2016019	7	SJC RR PASSING SIDING AIR-VAC RELOCATIONS		\$2,500	\$100,000	\$2,500	6/30/17
2016020	7	ELECTRICAL SERVICE ENTRANCE REPLACEMENTS AT THREE STATIONS		\$17,858	\$80,000	\$17,858	3/31/18
2016021	7	VAULT REMOVAL (11 SITES)	\$610,000	\$0	\$50,000	\$0	12/31/17
Subtotal			\$1,010,000	\$25,368	\$315,000	\$24,641	
FUTURE PROJECTS							Project Priority
2011033	7	ASSET MANAGEMENT PROGRAM/CMMS IMPLEMENTATION	\$500,000	\$0	\$300,000	\$0	92%
2016001	7	30-IN ETM SAN JUAN CREEK CROSSING REMOVAL	\$200,000	\$909	\$100,000	\$909	90%
2016001	7	30-IN ETM SAN JUAN CREEK CROSSING REMOVAL - SMWD REIMBURSEMENT	(\$100,000)	\$0	\$0	\$0	Reimbursement
2016008	7	NORTH ALISO CREEK LS BYPASS REPLACEMENT	\$240,000	\$0	\$50,000	\$0	84%
2016009	7	HIGHLAND PUMP PRESSURE RELIEF TO 650 ZONE	\$75,000	\$0	\$25,000	\$0	84%
2011077	14	MOULTON PEAK RADIO TOWER IMPROVEMENTS	\$235,000	\$0	\$50,000	\$0	80%
2016015	14	920 ZONE LOOP PIPELINE	\$200,000	\$0	\$50,000	\$0	78%
	7	ALISO CREEK LS AUXILIARY GENERATOR REPLACEMENT	\$530,000	\$0	\$0	\$0	76%
	7	SOUTHWING LS AUXILIARY GENERATOR REPLACEMENT	\$580,000	\$0	\$0	\$0	76%
2016007	7	54-INCH CIP IMPROVEMENTS	\$2,700,000	\$0	\$50,000	\$0	76%
2016003	7	FY2016-17 MH REHABILITATION	\$350,000	\$0	\$350,000	\$0	74%
2011024	7	DOCUMENT MANAGEMENT	\$389,000	\$106,421	\$100,000	\$0	72%
	14	SECONDARY FEED FOR 1050 ZONE	\$600,000	\$0	\$0	\$0	72%
2011028	7	VALENCIA LS REFURBISHMENT	\$700,000	\$0	\$75,000	\$0	70%
2011043	14	3A OUTFALL LINE VALVES	\$450,000	\$0	\$0	\$0	70%

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PROJECT NUMBER	FUND	PROJECT DESCRIPTION	TOTAL PROJECT AMOUNT	EXPENDED FROM INCEPTION TO DATE	FY 2016-17 ADOPTED BUDGET	FY 2016-17 EXPENDED TO DATE	ESTIMATED COMPLETION DATE
FUTURE PROJECTS (CONTINUED)							
2011043	14	3A OUTFALL LINE VALVES - REIMBURSEMENT	(\$225,000)	\$0	\$0	\$0	Reimbursement
2016011	12	TRAMPAS RESERVOIR CAPACITY ACQUISITION	\$15,000,000	\$0	\$3,000,000	\$0	66%
	7	3A ETM CREEK BANK STABILIZATION	\$2,000,000	\$0	\$0	\$0	66%
	7	3A ETM REPLACEMENT - AVE DE LA VISTA	\$2,475,000	\$0	\$0	\$0	66%
	7	3A ETM REPLACEMENT - CAMINO CAPO	\$3,500,000	\$0	\$0	\$0	66%
	7	3A ETM SJ CREEK-COUNTY OF ORANGE PHASE VIII	\$900,000	\$0	\$0	\$0	66%
	7	3A ETM IMPROVEMENTS - SMWD REIMBURSEMENT	(\$4,437,500)	\$0	\$0	\$0	Reimbursement
2012011	7	EASEMENT REHABILITATION PROGRAM - Phase 1	\$7,850,000	\$0	\$0	\$0	64%
2011032	7	OLD RANCH ROAD EASEMENT REFURBISHMENT	\$200,000	\$0	\$0	\$0	64%
2012010	7	CVP 16-INCH PW LINE REHABILITATION	\$650,000	\$0	\$0	\$0	64%
	7	UTILITY SERVICE ENTRANCE REPLACEMENTS - PW	\$738,000	\$0	\$0	\$0	62%
	12	RW EXPANSION PHASE V	\$35,000,000	\$0	\$0	\$0	62%
	14	OSO CREEK SEWER PARALLEL PIPELINE	\$1,950,000	\$0	\$0	\$0	62%
	7	UTILITY SERVICE ENTRANCE REPLACEMENTS - WW	\$145,000	\$0	\$0	\$0	62%
-105-011037	7	MISSION VIEJO HIGH SCHOOL LINE/VAULT REFURBISHMENT	\$200,000	\$0	\$0	\$0	60%
	7	OAKGROVE DRIVE RW PIPELINE REPLACEMENT	\$525,000	\$0	\$0	\$0	60%
	7	PZ450 ALISO CREEK POTABLE LINE RELOCATION	\$300,000	\$0	\$0	\$0	58%
2010013	12	LA PAZ BRIDGE CROSSING RW PIPELINE	\$435,000	\$54,573	\$0	\$0	58%
	14	GALIVAN BYPASS IMPROVEMENTS	\$175,000	\$0	\$0	\$0	58%
2010001	14	650-ZONE NIGUEL ROAD INTERTIE	\$320,000	\$0	\$0	\$0	56%
	7	EASEMENT REHABILITATION PROGRAM - Phase 2	\$6,000,000	\$0	\$0	\$0	56%
	7	STEEL TANKS SEISMIC & STRUCT RETROFITS - PW	\$5,000,000	\$0	\$0	\$0	56%
	7	STEEL TANKS SEISMIC & STRUCT RETROFITS - RW	\$200,000	\$0	\$0	\$0	56%
	14	LS GENERATOR EMERGENCY CONNECTIONS	\$430,000	\$0	\$0	\$0	56%
	7	BEAR BRAND PS PUMP REPLACEMENT	\$410,000	\$0	\$0	\$0	52%
	7	LITTLE NIGUEL PS PUMP REPLACEMENT	\$250,000	\$0	\$0	\$0	52%
	7	PACIFIC PARK PS PUMP & ENGINE REPLACEMENT	\$600,000	\$0	\$0	\$0	52%
	7	ROLLING HILLS PS ENGINE & PUMP REPLACEMENT	\$675,000	\$0	\$0	\$0	52%
	7	SHEEP HILLS PS ENGINE & PUMP REPLACEMENT	\$1,040,000	\$0	\$0	\$0	52%
	14	MARGUERITE/OSO CIP TAKEOUT	\$2,500,000	\$0	\$0	\$0	50%
2015006	7	I.D. 1 MASTER METER RELOCATION	\$600,000	\$0	\$0	\$0	48%
	12	SOUTH COUNTY PIPELINE TAKEOUT FACILITY	\$2,200,000	\$0	\$0	\$0	48%
	7	LN REG PARK RW VAULT RECONFIGURATION	\$150,000	\$0	\$0	\$0	46%
2011026	7	RANCHO UNDERGROUND PS REFURBISHMENT	\$250,000	\$4,619	\$0	\$0	46%
2012016	7	LITTLE NIGUEL PS ROOF REPLACEMENT	\$20,000	\$0	\$0	\$0	46%
2008049	12	SOUTH ORANGE COUNTY COASTAL OCEAN DESALINATION	\$700,000	\$662,685	\$0	\$0	on-

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PROJECT NUMBER	FUND	PROJECT DESCRIPTION	TOTAL PROJECT AMOUNT	EXPENDED FROM INCEPTION TO DATE	FY 2016-17 ADOPTED BUDGET	FY 2016-17 EXPENDED TO DATE	ESTIMATED COMPLETION DATE
FUTURE PROJECTS (CONTINUED)							Project Priority
2013005	7	LOWER SALADA LS FORCE MAIN REPLACEMENT	\$5,900,000	\$40,000	\$0	\$0	on-hold
2015023	7	NORTHERN TRANSMISSION MAIN IMPROVEMENTS N OF LA PAZ	\$500,000	\$190,449	\$250,000	\$162,030	Phase 2
Subtotal			\$102,774,500	\$1,059,656	\$4,400,000	\$162,939	
SOCWA & JRWSS PROJECTS							REMAINING BALANCE
JRWSS17	7	SCWD/JRWSS CAPITAL PROJECT	\$14,227,645	\$23,960	\$1,646,424	\$23,960	\$1,622,464
SMWD003	7	PLANT 3A IMPROVEMENTS	\$12,976,500	\$0	\$3,576,500	\$0	\$3,576,500
SMWD004	7	SMWD CAPITAL PROJECTS-JOINT FACILITIES	\$200,000	\$1,317	\$200,000	\$1,317	\$198,683
SOCWA130	7	2016/17 SOCWA CAPITAL PC 2(R)	\$13,390,721	\$894,318	\$1,597,112	\$894,318	\$702,794
SOCWA131	7	2016/17 SOCWA CAPITAL PC 15(R)	\$9,385,169	\$0	\$744,978	\$0	\$744,978
SOCWA132	7	2016/17 SOCWA CAPITAL PC 17(R)	\$34,474,090	\$2,805,064	\$6,020,489	\$2,805,064	\$3,215,425
SOCWA133	7	2016/17 SOCWA PC 5	\$79,101	\$39,090	\$79,101	\$39,090	\$40,011
SOCWA134	7	2016/17 SOCWA CAPITAL PC 24	\$3,931,848	\$26,898	\$21,925	\$26,898	\$0
Subtotal			\$88,665,074	\$3,790,647	\$13,886,529	\$3,790,647	\$10,100,855
PROGRAMS							REMAINING BALANCE
UP1617RR	7	UNANTICIPATED PROJECTS FUND 7	\$300,000	N/A	\$300,000	\$235,000	\$65,000
UP1617PC	14	UNANTICIPATED PROJECTS FUND 14	\$150,000	N/A	\$150,000	\$80,000	\$70,000
	7	PW PROJECTS PER ASSET MANAGEMENT MODEL	\$9,000,000	N/A	N/A	N/A	N/A
	7	RESERVOIR MANAGEMENT SYSTEM REPLACEMENT PROGRAM	\$11,450,000	N/A	N/A	N/A	N/A
	7	RESERVOIR RECOATING PROGRAM - PW	\$11,250,000	N/A	N/A	N/A	N/A
	7	SERVICE SECTION AND MCC REPLACEMENT PROGRAM - PW	\$2,050,000	N/A	N/A	N/A	N/A
	7	VALVE REPLACEMENT PROGRAM - PW	\$19,830,000	N/A	N/A	N/A	N/A
	7	VALVE REPLACEMENT PROGRAM - RW	\$1,600,000	N/A	N/A	N/A	N/A
	12	RECYCLED WATER RETROFITS	\$450,000	N/A	N/A	N/A	N/A
	7	RESERVOIR RECOATING PROGRAM - RW	\$2,970,000	N/A	N/A	N/A	N/A
	7	RW PROJECT PER ASSET MANAGEMENT MODEL	\$4,500,000	N/A	N/A	N/A	N/A
	7	SERVICE SECTION AND MCC REPLACEMENT PROGRAM - RW	\$700,000	N/A	N/A	N/A	N/A
	7	MH REHABILITATION PROGRAM	\$3,150,000	N/A	N/A	N/A	N/A
	7	SEWER LINING PROGRAM	\$2,400,000	N/A	N/A	N/A	N/A
	7	WW PROJECT PER ASSET MANAGEMENT MODEL	\$4,500,000	N/A	N/A	N/A	N/A
	7	SERVICE SECTION AND MCC REPLACEMENT PROGRAM - WW	\$1,400,000	N/A	N/A	N/A	N/A
Subtotal			\$75,700,000		\$450,000	\$315,000	\$135,000
TOTAL			\$364,468,507	\$52,875,750	\$46,569,520	\$10,022,168	