



moulton niguel water district

**BOARD OF DIRECTORS' MEETING
MOULTON NIGUEL WATER DISTRICT
26880 Aliso Viejo Pkwy, Suite 150, Aliso Viejo
January 9, 2020
CLOSED SESSION – 5:00 PM
OPEN SESSION – 6:00 PM
Approximate Meeting Time: 2 Hours**

1. CALL MEETING TO ORDER:

CLOSED SESSION:

2. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8
Property: 27500 La Paz Road, Laguna Niguel, CA
Agency Negotiator: Rod Woods, Director of Engineering
Negotiating Parties: TBD – Initial review of offers
Under Negotiation: Price and terms of payment for a potential sale or lease

OPEN SESSION - 6:00 PM

3. REPORT OUT OF CLOSED SESSION:

4. PLEDGE OF ALLEGIANCE:

5. 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 ITEM:

6. CALPERS UPDATE

CONSENT CALENDAR ITEMS:(Items on the Consent Calendar have been discussed at the regularly scheduled Administrative and Technical Committee meetings)

Consent items: Unless the General Manager or the Board requests that an item be removed from the Consent Calendar, all items will be acted upon as a whole and by one vote. Requests for discussion of any specific item should be made to the Presiding Officer in conjunction with the discussion of the consent motion.

7. MINUTES OF THE DECEMBER 12, 2019 BOARD OF DIRECTORS MEETING

8. MINUTES OF THE DECEMBER 18, 2019 SPECIAL BOARD OF DIRECTORS MEETING

9. AMENDMENT NO. 1 FOR ON-CALL INSPECTION SUPPORT SERVICES

It is recommended that the Board of Directors approve Amendment No. 1 to the On-Call Inspection Support Services Agreement with MWH Constructors in the amount of \$450,000 for a total not-to-exceed amount of \$750,000; authorize the General Manager or Assistant General Manager to execute the amendment; and to approve amendments up to 10% of the total contract value.

10. VEHICLE REPLACEMENT – JETTER RODDER / VACUUM COMBINATION TRUCK

It is recommended that the Board of Directors approve the purchase of a 2020 Vactor 2112i Combination Sewer Truck for \$480,406.

INFORMATION ITEMS:

11. FISCAL YEAR 2019-20 BUDGET UPDATE

LEGAL MATTERS:

12. BOARD PER DIEM

GENERAL MANAGER MATTERS:(Brief general updates on District matters and/or brief general updates from staff - Informational purposes only.)

PRESIDENT'S REPORT:

BOARD REPORTS:

FUTURE AGENDA ITEMS (Any items added under this section are for discussion at future meetings only.):

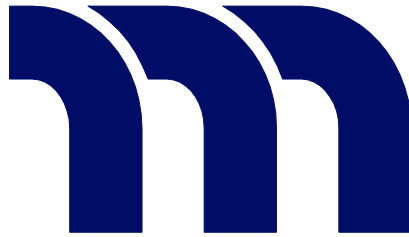
LATE ITEMS: (Appropriate Findings to be Made)

- 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, 26880 Aliso Viejo Parkway, Suite 150, Aliso Viejo, 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 BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT**

December 12, 2019

A Regular Meeting of the Board of Directors of the Moulton Niguel Water District was held at the District offices, 26880 Aliso Viejo Pkwy, Suite 150, Aliso Viejo, California, at 6:00 PM on December 12, 2019. There were present and participating:

DIRECTORS

Duane Cave	Vice President
Richard Fiore	Director
Donald Froelich	Vice President
Kelly Jennings	Director
Gary Kurtz	Director
Brian Probolsky	President

Also present and participating were:

STAFF MEMBERS, LEGAL COUNSEL, AND MEMBERS OF THE PUBLIC

Matt Collings	Assistant General Manager
Jake Vollebregt	Director of Regional & Legal Affairs
Jeff Ferre	Best, Best, & Krieger (General Counsel)
Tim Bonita	Recording Secretary
Sherry Wanninger	CAC Member
Sukhjinder Gill	Member of the Public

1. CALL MEETING TO ORDER:

The meeting was called to order by Brian Probolsky at 6:23pm.

2. PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Richard Fiore.

#7.

3. PUBLIC COMMENTS:

Sukhjinder Gill provided public comment.

CONSENT CALENDAR ITEMS:(Items on the Consent Calendar have been discussed at the regularly scheduled Administrative and Technical Committee meetings)

4. MINUTES OF THE NOVEMBER 14, 2019 BOARD OF DIRECTORS MEETING

5. MINUTES OF THE NOVEMBER 19, 2019 SPECIAL BOARD OF DIRECTORS MEETING

MOTION DULY MADE BY DONALD FROELICH AND SECONDED BY DUANE CAVE, CONSENT ITEMS 4 AND 5 WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, RICHARD FIORE, DONALD FROELICH, KELLY JENNINGS, GARY KURTZ, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.

ADMINISTRATIVE MATTERS:

6. AUDIT REPORTS FOR THE FISCAL YEAR ENDED JUNE 30, 2019

It is recommended that the Board receive and file the following reports:

- Comprehensive Annual Financial Report (“CAFR”), including auditors’ opinion on the fair presentation of the financial statements
- Auditors’ report on internal control
- Audit communication letter
- Article XIII-B Appropriations Limit Calculation report

Matt Collings provided a brief introduction to the item.

MOTION DULY MADE BY DONALD FROELICH AND SECONDED BY GARY KURTZ, ITEM 6 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, RICHARD FIORE, DONALD FROELICH, KELLY JENNINGS, GARY KURTZ, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.

GENERAL MANAGER MATTERS:(Brief general updates on District matters and/or brief general updates from staff - Informational purposes only.)

None.

PRESIDENT'S REPORT:

None.

BOARD REPORTS:

None.

FUTURE AGENDA ITEMS (Any items added under this section are for discussion at future meetings only.):

None.

LATE ITEMS: (Appropriate Findings to be Made)

None.

ADJOURNMENT:

The meeting was adjourned at 6:32 p.m.

Respectfully submitted,

Tim Bonita
Recording Secretary



moulton niguel water district

DRAFT
MINUTES OF THE SPECIAL MEETING OF THE
BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT

December 18, 2019

A Special Meeting of the Board of Directors of the Moulton Niguel Water District was held at the District offices, 26880 Aliso Viejo Pkwy, Suite 150, Aliso Viejo, California, at 6:00 PM on December 18, 2019. There were present and participating:

DIRECTORS

Duane Cave	Vice President
Richard Fiore	Director
Donald Froelich	Vice President
Kelly Jennings	Director
Gary Kurtz	Director
Bill Moorhead	Director
Brian Probolsky	President

Also present and participating were:

STAFF MEMBERS, LEGAL COUNSEL, AND MEMBERS OF THE PUBLIC

Joone Lopez	General Manager
Matt Collings	Assistant General Manager
Rod Woods	Director of Engineering
Drew Atwater	Director of Finance & Water Resources
Gina Hillary	Director of Human Resources
Todd Novacek	Director of Operations
Jose Solorio	Government Affairs Officer
Jeff Ferre	Best, Best, & Krieger (General Counsel)
Paige Gulck	Board Secretary
Tim Bonita	Recording Secretary
Matt Brown	MNWD
Johnathan Cruz	MNWD
Todd Dmytryshyn	MNWD
Megan Emami	MNWD

#8.

Shanika Goonewardene	MNWD
Mark Mountford	MNWD
Laura Rocha	MNWD
Lindsey Stuvick	MNWD
Sherry Wanninger	CAC Member

1. CALL MEETING TO ORDER

The meeting was called to order by Brian Probolsky at 6:02 p.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Bill Moorhead.

3. PUBLIC COMMENTS

None.

CONSENT CALENDAR ITEMS (Items on the Consent Calendar have been discussed at the regularly scheduled Administrative and Technical Committee meetings)

4. 2017-18 PIPELINE REHABILITATION AND REPLACEMENT – WASTEWATER

It is recommended that the Board of Directors award the construction services contract to Nu-Line Technologies, LLC in the amount of \$325,000; authorize the General Manager or Assistant General Manager to execute the contract; and to approve change orders up to 10% of the contract value.

5. AMENDMENT NO. 4 TO THE PROFESSIONAL SERVICES AGREEMENT FOR POTABLE AND RECYCLED PIPELINE REPLACEMENTS AT I-5 AND OSO CREEK

It is recommended that the Board of Directors approve Amendment No. 4 to the PSA with GHD, Inc. (GHD) in the amount of \$58,163 for a new total not-to-exceed amount of \$566,957; and authorize the General Manager or Assistant General Manager to execute the amendment.

6. AMENDMENT NO. 2 FOR THE REGIONAL LIFT STATION ENHANCEMENTS

It is recommended that the Board of Directors approve Amendment No. 2 to Task Order No. 3 of the As-Needed Engineering Services Agreement with Tetra Tech in the amount of \$63,800 for a new total not-to-exceed amount of \$262,600; authorize the General Manager or Assistant General Manager to execute the amendment; and to approve amendments up to 10% of the total task order value.

MOTION DULY MADE BY GARY KURTZ AND SECONDED BY DONALD FROELICH, CONSENT ITEMS 4 THROUGH 6 WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, RICHARD FIORE, DONALD FROELICH, KELLY JENNINGS, GARY KURTZ, BILL MOORHEAD, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.

7. TURF REMOVAL INCENTIVE FUNDING

It is recommended that the Board of Directors approve a change to the turf removal program to discontinue incentive funding for artificial turf; and authorize the General Manager or Assistant General Manager to implement the appropriate updates to the program documents.

This item was pulled from consent by Richard Fiore. Discussion ensued regarding the item.

MOTION DULY MADE BY DUANE CAVE AND SECONDED BY GARY KURTZ, ITEM 7 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, RICHARD FIORE, DONALD FROELICH, KELLY JENNINGS, GARY KURTZ, BILL MOORHEAD, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.

8. WATER UCI INDUSTRY-UNIVERSITY COOPERATIVE RESEARCH CENTER (IUCRC)

It is recommended that the Board of Directors authorize the General Manager or Assistant General Manager to sign the attached contribution agreement with the University of California Irvine (UCI) Foundation supporting the research of Water UCI.

This item was pulled from the agenda by Duane Cave. Joone Lopez provided information on the item.

MOTION DULY MADE BY BRIAN PROBOLSKY AND SECONDED BY DUANE CAVE, ITEM 8 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, RICHARD FIORE, DONALD FROELICH, KELLY JENNINGS, GARY KURTZ, BILL MOORHEAD, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.

TECHINCAL MATTERS

9. CONSTRUCTION CONTRACT AWARD FOR RECYCLED WATER DISTRIBUTION SYSTEM IMPROVEMENTS

It is recommended that the Board of Directors award the construction services contract to Ferreira Construction in the amount of \$588,130; authorize the General Manager or Assistant General Manager to execute the contract; and to approve change orders up to

#8.

10% of the contract value.

Rod Woods provided a brief introduction to the item.

MOTION DULY MADE BY GARY KURTZ AND SECONDED BY KELLY JENNINGS, ITEM 9 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, RICHARD FIORE, DONALD FROELICH, KELLY JENNINGS, GARY KURTZ, BILL MOORHEAD, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.

10. WATER SUPPLY ASSESSMENT FOR THE LAGUNA NIGUEL TOWN CENTER

It is recommended that the Board of Directors approve the December 2019 WSA for the Laguna Niguel Town Center Project as prepared by Dudek.

Megan Emami provided details on the item. Discussion ensued regarding the WSA.

MOTION DULY MADE BY DUANE CAVE AND SECONDED BY BILL MOORHEAD, ITEM 10 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, RICHARD FIORE, DONALD FROELICH, KELLY JENNINGS, GARY KURTZ, BILL MOORHEAD, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.

ADMINISTRATIVE MATTERS

11. SB 998 IMPLEMENTATION (RESOLUTION 19-25)

It is recommended that the Board of Directors approve the resolution entitled, "Amending Rules and Regulations for Water Service to Revise Provisions Regarding Service Charges and Deposits and to Adopt a Policy on Discontinuation of Residential Water Service."

Matt Collings provided information on the item. Discussion ensued regarding the requirements of SB998.

MOTION DULY MADE BY DONALD FROELICH AND SECONDED BY GARY KURTZ, ITEM 11 WAS APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, RICHARD FIORE, DONALD FROELICH, KELLY JENNINGS, GARY KURTZ, BILL MOORHEAD, AND BRIAN PROBOLSKY ALL VOTING 'AYE'.

INFORMATION ITEMS

12. MONTHLY FINANCIAL REPORT

Matt Collings provided the Monthly Financial Report.

GENERAL MANAGER MATTERS (Brief general updates on District matters and/or brief general updates from staff - Informational purposes only.)

There was no report.

BOARD REPORTS

Bill Moorhead stated that he attended the Orange County Water Association Holiday event on December 6th, the ACWA Fall Conference in San Diego December 3rd-5th, and the Laguna Niguel Holiday Parade on December 14th.

Duane Cave stated that he also attended the ACWA Fall Conference and the Laguna Niguel Holiday Parade.

Donald Froelich stated that he also attended the Laguna Niguel Holiday Parade.

Kelly Jennings stated that she also attended the Laguna Niguel Holiday Parade. Kelly also stated that she will be sitting on the Executive Committee for Sustain So-Cal.

Dick Fiore stated that he also attended the Laguna Niguel Holiday Parade.

PRESIDENT'S REPORT

Brian Probolsky stated that he also attended the Laguna Niguel Holiday Parade and the ACWA Fall Conference. Brian also attended the monthly meeting with the residents around Plant 2A on December 17th regarding the various projects in construction at Plant 2A.

ADJOURNMENT

The meeting was adjourned at 6:57p.m.

Respectfully submitted,

Tim Bonita
Recording Secretary



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE: January 9, 2020**

**FROM: Rod Woods, Director of Engineering
David Larsen, Engineering Manager**

SUBJECT: Amendment No. 1 for On-Call Inspection Support Services

SUMMARY:

Issue: Board action is required to execute Amendment No. 1 to the On-Call Inspection Support Services Agreement with MWH Constructors.

Recommendation: It is recommended that the Board of Directors approve Amendment No. 1 to the On-Call Inspection Support Services Agreement with MWH Constructors in the amount of \$450,000 for a total not-to-exceed amount of \$750,000; authorize the General Manager or Assistant General Manager to execute the amendment; and to approve amendments up to 10% of the total contract value.

Fiscal Impact: Adequate funds are included in the FY 2019-20 Operating Budget, Fund 7, Rehabilitation and Replacement, and Fund 14, Planning and Construction.

Reviewed by Committee: Yes, recommended for approval at the Technical Committee Meeting on January 6, 2020.

Reviewed by Legal: Yes

BACKGROUND:

The Engineering Department inspection staff oversees inspection services for all capital improvement, private development, and emergency repair projects. Staff also oversees the locating and marking of District facilities for Underground Service Alerts (USA). To ensure that each activity is completed in a timely manner and in accordance with District's standards, inspection support services are utilized to assist staff during peak periods of construction activity.

#9.

Amendment No. 1 for On-Call Inspection Support Services

January 9, 2020

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In August 2019, following a competitive solicitation, the Board awarded an On-Call Inspection Support Services contract to MWH Constructors for a one-year term to provide inspection in support of capital improvement program and private development projects, and to meet the District's obligations for USA response and markings.

DISCUSSION:

Staff frequently reassesses its current and projected workload to ensure that the District is able to execute the capital program while meeting requests from private developers. As part of this process, staff has met with each of the cities within the District's service area to review the upcoming construction activities, such as road paving and underground telecommunication projects, that require USA markings. Following these meetings, staff is recommending that the existing on-call inspection support be extended through the end of the 2020 calendar year. The associated not-to-exceed fee for this 3-½ month extension of services is \$60,000.

Additionally, following a discussion with the ad-hoc committee, staff engaged MWH Constructors to support project management, inspection, and oversight during construction of the eleven projects associated with the Construction-Manager-at-Risk (CMAR) contract that commenced in August 2019. The proposed Owner's Representative services from the on-call inspector was intended to replace the services previously being provided by Newport Real Estate Services.

Staff has determined the additional support to be beneficial to the execution and oversight of the CMAR contract and recommends extending the duration of services. This will facilitate timely responses and resolution of issues to ensure that the construction work is being performed in accordance with the contract and District's requirements. Typical services include:

- Monitoring and documenting on-site construction activities
- Monitoring project documentation and records by others
- Preparing daily reports with photo documentation
- Monitoring shop drawings and requests for information
- Assisting with change order evaluations
- Monitoring compliance with the City's conditions of approval
- Scheduling required consultants and specialty inspections
- Monitoring CMAR's as-built drawings
- Reviewing and monitoring commissioning and startup testing

It is anticipated that these construction oversight services would be utilized for the full duration of the CMAR contract and construction of associated projects. The services would be completed on an as-needed, time-and-material basis, with the total value of services estimated at \$390,000.

Amendment No. 1 for On-Call Inspection Support Services

January 9, 2020

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

Based on the outlined needs for both inspection support and Owner's Representative services, Staff recommends that the Board authorize the execution of Amendment No. 1 to the On-Call Inspection Support Services Agreement with MWH Constructors in the amount of \$450,000 for a total not-to-exceed amount of \$750,000

Attachments:

1. On-Call Inspection Support Services Agreement
2. Amendment No. 1 to the On-Call Inspection Support Services Agreement

**AGREEMENT BETWEEN
MOULTON NIGUEL WATER DISTRICT AND
MWH CONSTRUCTORS FOR
ON-CALL INSPECTION SUPPORT SERVICES
CONTRACT NO. OM19-20.009**

This Agreement (the "Agreement") is made and entered into this 13th day of September 2019 ("Effective Date") by and between the Moulton Niguel WATER DISTRICT ("MNWD") and MWH Constructors ("Consultant"). MNWD and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

SECTION I – PURPOSE

CONSULTANT possesses specialized skills and shall utilize these skills to provide as-needed inspection support services to MNWD in connection with the implementation of MNWD projects (the "Services") on a time and material basis, as such term is defined and applied under this Agreement. This Agreement, including all attached Exhibits form the Agreement between the Parties ("Agreement").

SECTION II – TERM

The term of this Agreement shall be from the Effective Date and shall remain in effect for a period of one (1) year thereafter, unless earlier terminated as provided herein.

SECTION III – SCOPE OF SERVICES

Section 3.1. Scope of Services. The scope of services to be provided by Consultant is set forth on Exhibit "A" attached hereto and by this reference incorporated herein ("Services"). Consultant warrants that it will perform the Services as set forth herein in a competent, professional and satisfactory manner. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

Section 3.2. Schedule of Services. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines, including any schedule of services set forth in Exhibit "A."

Section 3.3. Permits, Licenses, Fees and Other Charges. Consultant shall, in accordance with applicable laws and ordinances, obtain at his/her/its expense all permits and licenses necessary to accomplish the Services. Failure to maintain a required license or permit may result in immediate termination of this Agreement.

SECTION IV – COMPENSATION

Section 4.1. Payment for Services Rendered. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement on a time and material bases at a set rate of \$130 an hour. The total compensation shall not exceed **Three Hundred Thousand Dollars (\$300,000)** without written approval by MNWD. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

Section 4.2. Invoices. Consultant shall submit to MNWD a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. MNWD shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

- A. Payment shall not constitute acceptance of any work completed by Consultant.
- B. The making of final payment shall not constitute a waiver of any claims by MNWD for any reason whatsoever.

Section 4.3. Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by MNWD.

Section 4.4. Extra Work. At any time during the term of this Agreement, MNWD may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by MNWD to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization by MNWD.

SECTION V – REPRESENTATIVES OF THE PARTIES

Section 5.1. MNWD's Representative. MNWD hereby designates its Director of Engineering, or his or her designee, to act as its representative for the performance of this Agreement ("MNWD's Representative"). Consultant shall not accept direction or orders from any person other than MNWD's Representative or his or her designee.

Section 5.2. Consultant's Representative. Consultant hereby designates Jesus Sosa, or his designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

SECTION VI – RESPONSIBILITIES OF CONSULTANT

Section 6.1. Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. MNWD retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of MNWD and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

Section 6.2. Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from MNWD, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

Section 6.3. Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of MNWD.

Section 6.4. Substitution of Key Personnel. Consultant has represented to MNWD that certain key personnel will perform and coordinate the Services under this Agreement. The key personnel for performance of this Agreement are as follows: Jesus Sosa. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of MNWD. In the event that MNWD and Consultant cannot agree as to the substitution of key personnel, MNWD shall be entitled to terminate this Agreement for cause. Furthermore, any personnel who fail or refuse to perform the Services in a manner acceptable to MNWD, or who are determined by MNWD to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property, shall be promptly removed from performing Services by the Consultant at the request of MNWD.

Section 6.5. Coordination of Services. Consultant agrees to work closely with MNWD staff in the performance of Services and shall be available to MNWD's staff, consultants and other staff at all reasonable times.

Section 6.6. Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold MNWD, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

SECTION VII – LABOR CODE PROVISIONS

Section 7.1. Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. 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 such Prevailing Wage Laws. A copy of these prevailing wage rates are on file with the Department of Industrial Relations and can be found online with the State of California at <http://www.dir.ca.gov/dlsr/pwd>. 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. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold MNWD, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

Section 7.2. Registration and Labor Compliance. If the services are being performed as part of an applicable "public works" or "maintenance" project, then, in addition to the foregoing, pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

Section 7.3. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California 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 of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

SECTION VIII – INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall immediately indemnify, defend, and hold MNWD, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against MNWD or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse MNWD for the cost of any settlement paid by MNWD or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for MNWD's attorneys' fees and costs, including expert witness fees. Consultant shall reimburse MNWD and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by MNWD, its directors, officials, officers, employees, agents, or volunteers. 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.

SECTION IX – INSURANCE

Section 9.1. Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to MNWD that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to MNWD that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for MNWD to terminate this Agreement for cause.

Section 9.2. Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

A. Commercial General Liability. Coverage for commercial general liability insurance shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001). Consultant shall maintain limits no less than \$1,000,000 per occurrence, or the full per occurrence limits of the policies available, whichever is greater, for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit or product-completed operations aggregate limit is used, including but not limited to form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. The general liability policy shall include or be endorsed (amended) to state that: (1) MNWD, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work using as broad a form as CG 20 10 11 85 or the latest versions of both CG 20 10 and CG 20 37; and (2) the insurance coverage shall be primary insurance as respects MNWD, its directors, officials, officers, employees, agents, and volunteers using as broad a form as CG 20 01 04 13, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by MNWD, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

B. Automobile Liability. Coverage shall be at least as broad as the latest version of the Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto). Consultant shall maintain limits no less than \$1,000,000 per accident for bodily injury and property damage. The automobile liability policy shall include or be endorsed (amended) to state that: (1) MNWD, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects MNWD, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by MNWD, its directors, officials, officers, employees, agents,

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and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way. The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

C. Workers' Compensation and Employer's Liability Insurance. Consultant shall maintain Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance in an amount no less than \$1,000,000 per accident for bodily injury or disease. The insurer shall agree to waive all rights of subrogation against MNWD, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

D. Excess Liability (if necessary). The limits of Insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess coverage shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of MNWD (if agreed to in a written contract or agreement) before MNWD's own primary or self-insurance shall be called upon to protect it as a named insured. The policy shall be endorsed to state that MNWD, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured at least as broad a form as CG 20 10 11 85 or the latest versions of both CG 20 10 and CG 20 37. The coverage shall contain no special limitations on the scope of protection afforded to MNWD, its directors, officials, officers, employees, agents, and volunteers.

Section 9.3. All Coverages. The Consultant is required by this Agreement to state that: (i) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to MNWD; If any of the required coverages expire or cancel during the term of this agreement, the Consultant shall deliver the renewal certificate(s) including the general liability additional insured endorsement to MNWD at least ten (10) days prior to the cancellation or expiration date; and (ii) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to MNWD, its directors, officials, officers, employees, agents, and volunteers.

Section 9.4. Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to MNWD, its directors, officials, officers, employees, agents, and volunteers.

Section 9.5. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by MNWD. Consultant shall guarantee that, at the option of MNWD, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects MNWD, its directors, officials, officers, employees, agents, and volunteers; and insurer shall provide or be endorsed to provide that the deductibles or SIR may be satisfied by either the named or additional insureds, co-insurers, and/or insureds other than the First Named Insured or (ii) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

Section 9.6. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII or equivalent, or as otherwise approved by MNWD.

Section 9.7. Verification of Coverage. Consultant shall furnish MNWD with certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory

to MNWD. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by MNWD if requested. All certificates and endorsements must be received and approved by MNWD before work commences. MNWD reserves the right to require complete, certified copies of all required insurance policies, at any time. In the event that the Consultant employs other consultants (sub-consultants) as part of the services covered by this agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above.

Section 9.8. Reporting of Claims. Consultant shall report to MNWD, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

SECTION X – TERMINATION

Section 10.1. Grounds for Termination. MNWD may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to MNWD, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

Section 10.2. Effect of Termination. If this Agreement is terminated as provided herein, MNWD may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

Section 10.3. Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, MNWD may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

SECTION XI – OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

Section 11.1. Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for MNWD to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of MNWD, and shall not be used in whole or in substantial part by Consultant on other projects without MNWD's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to MNWD reproducible copies of all Documents & Data, in a form and amount required by MNWD. MNWD reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by MNWD at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to MNWD upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to MNWD any such

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documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to MNWD upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify MNWD and provide MNWD with the opportunity to obtain the documents.

Section 11.2. Subconsultants. Consultant shall require all subconsultants to agree in writing that MNWD is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by MNWD.

Section 11.3. Right to Use. MNWD shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at MNWD's sole risk. If MNWD uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to MNWD upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

Section 11.4. Intellectual Property Indemnification. Consultant shall defend, indemnify and hold MNWD, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by MNWD of the Documents & Data, including any method, process, product, or concept specified or depicted.

Section 11.5. Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of MNWD, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use MNWD's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of MNWD.

SECTION XII – ACCOUNTING, INSPECTION AND AUDIT

Section 12.1. Records. Consultant shall keep and shall preserve for four (4) years after final completion of the services, accurate and detailed records of all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents or records evidencing or relating to the work, services and disbursements charged to MNWD under this Agreement (collectively, "Books and Records"). Any and all Books and Records must be maintained in accordance with generally accepted accounting principles and must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant under this Agreement. During such four (4) year period, Consultant shall give MNWD and its agents, during normal business hours, access to such Books and Records. MNWD and its agents shall have the right to make copies of any of the said Books and Records.

Section 12.2. Custody. Where MNWD has reason to believe that any of the Books and Records required to be maintained by this Article may be lost or discarded due to dissolution or termination of Consultant's business, MNWD may, by written request, require that custody of such Books and Records be given to a person or entity mutually agreed upon and such Books and Records thereafter shall be maintained by such person or entity at Consultant's expense. Access to the Books and Records shall be granted to MNWD and its Representatives.

SECTION XIII – GENERAL PROVISIONS

Section 13.1. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

MNWD:

Moulton Niguel Water District
P.O. Box 30203
Laguna Niguel, CA 92607
Attn: Director of Engineering

CONSULTANT:

MWH Constructors
300 N. Lake Ave., Suite 400
Pasadena, CA 91101
Attn: Randy Lovan

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

Section 13.2. Subcontracting/Subconsulting. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of MNWD. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

Section 13.3. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of MNWD's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

Section 13.4. Time of Essence. Time is of the essence for each and every provision of this Agreement.

Section 13.5. MNWD's Right to Employ Other Consultants. MNWD reserves right to employ other consultants in connection with this Project.

Section 13.6. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

Section 13.7. Assignment or Transfer. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of MNWD. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

Section 13.8. Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to MNWD include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

Section 13.9. Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

Section 13.10. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

Section 13.11. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

Section 13.12. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

Section 13.13. Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with MNWD's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, MNWD shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of

MNWD, during the term of his or her service with MNWD, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

Section 13.14. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

Section 13.15. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

Section 13.16. Government Code Claim Compliance. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against MNWD. 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, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against MNWD.

Section 13.17. Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

Section 13.18. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

Section 13.19. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

Section 13.20. Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a written amendment signed by both parties.

MOULTON NIGUEL WATER DISTRICT: ↔ MWH CONSTRUCTORS:

By: 

By: 
~~(Authorized Representative of Consultant)~~

Printed Name: Randy Lovan

Printed Name: MATT COLLINS

Title: So. CA Regional Manager

Title: ASSISTANT GENERAL MANAGER

Dated: 09/06/2019

Dated: 9/13/19

EXHIBIT A

SCOPE OF SERVICES

This agreement covers a range of projects and services which consist of, but are not limited to the following activities:

1. **General Inspection** – For general inspection of Capital Improvement Program projects, provide inspection support and expertise on civil, structural, mechanical, and electrical portions of the project to verify compliance with the Contract Documents as requested by the District.
 - A. Observe the jobsite for compliance with safety requirements. Inform the District of any concerns or problems observed concerning site or job safety.
 - B. Verify that all deliveries and installation of equipment and materials conform to the Contract Documents and approved shop drawings.
 - C. During welding operations, verify certifications, joint preparation, electrode types, and finished product comply with the Contract Documents.
 - D. During mechanical anchorages, verify materials and installation procedures comply with the Contract Documents, approved submittals, and manufacturer's recommendations.
 - E. Take digital photographs during key points in the construction to document the progress and submit photo files on a CD with the final report.
 - F. Locate and identify existing District facilities for Underground Service Alert.
 - G. Read and understand construction plans, prepare as-built drawings, and inspection reports, and is familiar with standard specifications for construction of domestic water, sewer, and reclaimed water facilities.
 - H. Prepare punch list for final release; receive and file appropriate construction drawings.
 - I. Assist with the review of land development projects for District's standards compliance.
 - J. Prepare record drawings, daily construction reports, and other written reports as necessary for construction activities.
 - K. Attend and conduct pre-construction meetings and any other construction related meetings.
 - L. Coordinate work with District staff and inspectors to keep them informed on the water system and how it relates to other District pipelines, facilities, and other District operations.

**AMENDMENT NO. 1 TO THE AGREEMENT
BETWEEN MOULTON NIGUEL WATER DISTRICT AND
MWH CONSTRUCTORS FOR
ON-CALL INSPECTION SUPPORT SERVICES
CONTRACT NO. OM19-20.009**

This Amendment No. 1 (this "Amendment") is entered into and effective as of _____, 2020, amending the Services Agreement dated September 13, 2019 (the "Agreement"), by and between Moulton Niguel Water District ("MNWD"), and MWH Constructors ("Consultant") (collectively, the "Parties"). Any capitalized terms used but not defined herein shall have the meaning assigned to them in the Agreement.

RECITALS

A. WHEREAS, on September 13, 2019, the Parties entered into the Agreement for on-call inspection support services through September 12, 2020 for a total not-to-exceed amount of \$300,000; and

B. WHEREAS, the Parties desire to extend Agreement term until March 31, 2021; and

C. WHEREAS, the Parties desire to amend the Agreement's Scope of Services to be performed by Consultant under this Agreement and have negotiated and agreed to also include the Supplemental Scope of Services, attached hereto and incorporated herein by this reference as Exhibit "A".

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

1. The term of the Agreement is hereby extended through March 31, 2021
2. The Services to be provided by Consultant shall be revised to also include the Services set forth in Exhibit "A" attached hereto and incorporated by this reference.
3. All payments and services associated with this Amendment shall be on a time and material basis at the rates set forth in Exhibit "B" attached hereto and incorporated by this reference, and shall not exceed \$450,000.
4. The Parties agree that the total Agreement amount, including this Amendment, shall not exceed Seven Hundred Fifty Thousand Dollars \$750,000.
5. All requisite insurance policies to be maintained by the Consultant pursuant to the Agreement will include coverage for this Amendment.
6. All other provisions of the Agreement will remain in full force and effect. In the event of any conflict or inconsistency between the Agreement and this Amendment, the terms of this Amendment shall control.

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

MOULTON NIGUEL WATER DISTRICT:

By: _____

Printed Name: _____

Title: _____

Dated: _____

MWH CONSTRUCTORS:

By: _____
(Authorized Representative of
Consultant)

Printed Name: _____

Title: _____

Dated: _____



Exhibit "A"

Supplemental Scope of Services

Description of the Work

Moulton Niguel Water District (MNWD) is Currently under contract with Layton Construction Company to provide Construction Management at Risk (CMAR) Services for their Plant 2A Upgrades Projects. MNWD has retained Ware Malcolm to provide engineering and architectural support services during construction. Notice to proceed was issued to Layton Construction Company on May 29, 2019. The construction phase project duration is 550 calendar days (commencing on August 26, 2019).

The Plant 2A Upgrades consist of the following 11 improvement projects:

1. Field Maintenance Facility
2. Emergency Generator
3. Fleet Services Building
4. Equipment Storage
5. Warehouse Improvements
6. Fueling Station
7. Site Reconfiguration and Geopiers
8. Site Utilities
9. Site Improvements
10. Landscape & Irrigation
11. Administration Facility

Scope of Services

MWHC will be your representative and advocate during construction of your facilities. As experienced construction professionals, we help you proactively manage your project to minimize risks, prevent problems and eliminate surprises to ensure on-time and on-budget completion. We will monitor the progress of the work, from pre-construction, construction and start-up, to ensure that you get the facility you need while receiving the best value for your money. As the Owner's Representative, MWHC will provide as-needed independent third-party review, recommendations and coordination of project activities. Our core focus is the monitor and document the construction activities for each phase of the work and report any deficiency directly to MNWD's Project Manager. We will assist the MNWD's Project Manager with tracking expenditures and anticipated project costs against the budget on an ongoing basis.

During the project duration MWHC will act as the District's representative, provide clear communication and keep MNWD informed. We will assist the Moulton Niguel Project Manager in monitoring the following:

Pre-Construction Phase (with respect to Trade Contractors):

- Evaluate Project controls and procedures
- Monitor maintaining budget
- Monitor funding requirements
- Attend pre-construction conferences
- Monitor/Review/recommend progress payment requests and contract modifications

Construction Phase:

- Monitor and document on-site construction activities
- Prepare daily reports with photo documentation
- Work to resolve disputes quickly and informally
- Assist with dispute resolution actions

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Construction Phase cont.:

- Assist with change order negotiation and payment amounts
- Monitor shop drawing submittals and RFI's for timely processing and procurement
- Prepare and distribute monthly progress reports
- Review/monitor project documentation
- Review /monitor compliance with safety plan
- Attend project meetings as needed
- Review/monitor Project Records
- Review/monitor contractor's commissioning & startup testing plans
- Assist with identification of appropriate changes in scope
- Assist with validating impact of changes
- Review/Monitor documentation of changes
- Review/monitor Contractor's as-built drawings
- Review/monitor Certification of Proper Installation (COP) from the Manufactures

Post-Construction Phase:

- Project Closeout and Warranty Phase:
- Assist with substantial completion and final acceptance
- Review contractor and vendor submission of all required documents
- Coordinate transfer of spare parts and other property to the Owner
- Ensure all COP's are validate and complete
- Ensure all warranties are submitted
- Monitor correction of punch list items



Exhibit "B" Rate Schedule

MWH 2020 Hourly Rate Schedule for Construction Management, Inspection and Administrative Rates

CMS Regional Director	\$225	per hour
CMS Principal - Inland Empire Area Manager	\$215	per hour
Project Manager	\$175	per hour
Construction Manager	\$155 - \$175	per hour
Resident Engineer	\$140 - \$155	per hour
Owner's Representative	\$135 - \$155	per hour
Office Engineer	\$ 110 - \$125	per hour
Construction Inspector, Specialty	*\$150 - \$140	per hour
Construction Inspector	*\$140 - \$130	per hour
Estimator / Scheduler	\$130 - \$140	per hour
Construction Administration	\$95	per hour
Vehicle and Mileage Rate	\$1,100	flat rate per month
Construction Claims Analysis & Support		
• Director Risk Management	\$275	per hour
• Manager Claims Analyst	\$195	per hour
• Commercial Claim Analyst	\$175	per hour





moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** January 9, 2020

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

SUBJECT: Vehicle Replacement – Jetter Rodder / Vacuum Combination Truck

SUMMARY:

Issue: Board action is required to authorize the purchase of a 2020 Vactor 2112i Combination Sewer Cleaner Truck to replace the existing Unit #25.

Recommendation: It is recommended that the Board of Directors approve the purchase of a 2020 Vactor 2112i Combination Sewer Truck for \$480,406.

Fiscal Impact: Sufficient funds are included in the adopted Fiscal Year 2019-2020 Budget.

Reviewed by Committee: Yes, recommended for approval at the Technical Committee Meeting on January 6, 2020.

Reviewed by Legal: Not applicable

BACKGROUND:

District staff utilizes combination trucks as the primary tool to clean and maintain the wastewater collection system. The District's approved Sewer System Management Plan (SSMP) states that all 6-inch to 12-inch residential sewer lines are cleaned annually, and the larger trunk sewer lines are cleaned as needed, based on field inspections. Keeping wastewater lines free of debris, grease and roots minimizes the potential for sanitary sewer overflows (SSO's) within the District's collection system. Additionally, in the event of an SSO, combination trucks are utilized to vacuum wastewater runoff prior to entering the storm drain system. The proposed combination truck will replace Unit #25, which is nineteen years old and has seen an increase in maintenance requirements.

#10.

Vehicle Replacement – Jetter Rodder / Vacuum Combination Truck

January 9, 2020

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DISCUSSION:

Comparative price analysis for this equipment purchase was performed through Sourcewell (previously NJPA) which is a public agency that enters into cooperative purchasing contracts for the benefit of its members. Sourcewell contracts are competitively solicited nationally.

MNWD is a member of Sourcewell (ID# 158819) and is authorized by California Government Code Section 6502 and Section 23 of MNWD's 2019 Purchasing Policy to participate in cooperative purchasing agreements with other public agencies. Staff is recommending the purchase of a 2020 Vactor 2112i Combination Truck, in the amount of \$480,406 based on cost, and satisfaction of District's requirements.