



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Cohen and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Jim Arndt, Public Works Director

DATE: June 16, 2009

SUBJECT: Award Professional Services Contract to Kathleen McGowan, P.E., for Municipal Stormwater NPDES Permit and TMDL Consulting

RECOMMENDATION:

Staff recommends that the City Council pass a motion to award a professional service contract to Kathleen McGowan, P.E., in the amount of \$60,404 to assist the City in meeting the requirements of the NPDES Permit for Municipal Storm Water and Urban Runoff Discharges (Municipal Stormwater Permit) and undertaking implementation activities to comply with the Santa Monica Bay Beaches Bacteria Wet Weather and Dry Weather TMDLs.

FISCAL IMPLICATION:

Funds are budgeted in the 2009-2010 Public Works Department's Storm Drain Maintenance budget for these services.

BACKGROUND:

The City is required to maintain its Storm Water Quality Management Program as defined under the expired third-term Municipal Stormwater Permit until a new permit is put into effect by the Los Angeles Regional Water Quality Control Board. The draft fourth-term Municipal Stormwater Permit is expected to be released and negotiated during FY 2009-10. Compliance with winter dry weather targets and 10% reduction in wet weather exceedances of the Santa Monica Bay Beaches Bacteria TMDL (Bacteria TMDL) begins July 15, 2009.

Effective management, meticulous reporting and sophisticated regulatory and technical expertise are required to assist the City in meeting current requirements and preparing to meet ever more stringent water quality standards. The consultant provides a customized scope of work to provide the City with optimized, cost-effective and high quality compliance services. The consultant provides expert technical and regulatory advice and assistance which is leveraged through time-sharing of McGowan's expertise among several small municipal clients with policy approaches to water quality that aligns with those of the City of Manhattan Beach.

DISCUSSION:

The consultant was selected to provide regulatory and technical assistance to the City for a number of reasons. The consultant has extensive experience in developing and implementing

urban runoff and stormwater quality compliance programs and is highly regarded for her grasp of complex environmental regulatory and policy issues. The consultant has worked closely with City staff over the past few years to develop a clear understanding of the City's policy priorities, organizational structure, and in-house capabilities and responsibilities and has tailored her services to suit the City's needs. This depth of understanding and ongoing relationship with City staff provides a level of continuity to the City's water quality programs that has previously been difficult to achieve through in-house Public Works analysts who are frequently promoted or otherwise advance out of the position. Her understanding of the City's programs and initiatives is also important in preparing a thorough annual compliance report to the Regional Water Quality Control Board that fully illustrates and explains the City's extensive efforts to protect water quality.

Most other cities of similar size retain outside consultants for assistance in stormwater compliance or have an in-house staff person dedicated to water quality programs. Kathleen McGowan consults for a few South Bay municipal clients on an ongoing basis (Cities of Hermosa Beach, Rolling Hills Estates and Rolling Hills) and leverages that effort by splitting her time among them for work done in common, e.g., for representation at meetings or regulatory analysis.

Kathleen McGowan has submitted a scope of work holding her labor rate to the current 2008-09 rate and recommending only a minor increase in total hours over the previous year to support the City in additional Bacteria TMDL implementation efforts. Excluding optional Subtask 8.3 which would only be authorized if the City were to win grant funding for the Greenbelt Low Flow Infiltration project, the proposal is for an amount \$2,000 less than FY 2008-09.

Many new initiatives are expected to be brought forth by Regional Board staff in the upcoming negotiation and subsequent roll-out of new requirements arising out of the 4th term Municipal Stormwater Permit.

Attachment: FY 09-10 Proposal for Municipal Stormwater NPDES Permit and TMDL Consulting

KATHLEEN MCGOWAN, P.E.
Environmental Engineer

May 5, 2009

Mr. Jim Arndt, Director
City of Manhattan Beach
Dept. of Public Works
3621 Bell Avenue
Manhattan Beach, CA 90266

RE: *FY 09-10 PROPOSAL FOR MUNICIPAL STORMWATER NPDES AND TMDL CONSULTING*

Dear Mr. Arndt:

I am pleased to provide to you this proposal to assist the City of Manhattan Beach in meeting the requirements of the NPDES Permit for the Municipal Separate Storm Sewer System (Municipal Stormwater Permit) and in undertaking compliance with Total Maximum Daily Loads for Bacteria at Santa Monica Bay Beaches.

Scope of Work

This proposal provides a scope of work for the fiscal year period from July 1, 2009 to June 30, 2010 that will carry the City through the post-third term NPDES Municipal Stormwater Permit period and into a new permit period which is expected to begin during the 2009-2010 fiscal year. Accordingly, the NPDES permit efforts in this work plan are focused on maintaining the City's current programs as defined under the expired third-term permit, providing review and comment as needed on proposed drafts of the new permit, and providing training and support for City staff with respect to new permit provisions. It is assumed that implementation of significantly expanded or new programs under the permit will not begin until FY 10-11. Scope of TMDL tasks are based on continued implementation of the Jurisdictional Group 5&6 (J5&6) Implementation Plan programs in collaboration with the other J5&6 responsible agencies in accordance with memoranda of agreements between the agencies.

I consult for several municipal clients with similar philosophical approaches to NPDES and TMDL issues so that I may represent multiple client interests without conflict. Wherever possible I distribute my level-of-effort across multiple clients thereby reducing individual costs to each client. Subtasks where I anticipate being able to do so are identified with an asterisk (*).

Task 1 NPDES Program Management

The Municipal Stormwater Permit Program touches virtually all areas of municipal activities and requires effective management and coordination across municipal divisions and departments in order to assure that all aspects of the permit are carried out. I will work closely with the City's staff in conducting the following program management subtasks.

Subtask 1.1 Internal Coordination

This task provides an allocation of time for regular communication and briefing of City staff on the status, recent developments and need for action or response with respect to Municipal Stormwater Permit and TMDL implementation and to provide opportunity for City staff to inject policy direction as needed. Monthly meetings with City staff are assumed in addition to email and telephone communication.

Subtask 1.2 NPDES Annual Report and Budget Summary

Immediately following the close of the current fiscal year, data and information will be gathered from each of the program areas and compiled to prepare the draft annual report for City staff review. This includes working with City staff to prepare the annual budget summary for the annual report, revision of the annual report based on City staff review, and uploading the final report elements to the County for compilation with other municipal reports to the Regional Board.

It is assumed that City staff will provide necessary information for the annual report related to:

- Illicit connection and discharge incident tracking and GIS mapping
- New development/redevelopment standard urban runoff mitigation plans (SUSMP)
- Building & Safety's storm-water related inspections and plan check
- Public works CIP projects related to stormwater
- Public outreach and education events and materials, including those placed through Used Oil and Recycled Beverage Container program
- Records of catch basin cleaning and marking
- Records of sanitary sewer overflow events (SSOs)
- Street sweeping records
- Budgetary information for stormwater expenditures in each category

Subtask 1.3 Executive Advisory Committee & New Permit Issues*

The Executive Advisory Committee (EAC) was established by the Municipal Permittees to discuss and coordinate response to issues among the Principal Permittee and Co-Permittees across all areas of the Municipal Stormwater NPDES Permit. The EAC meets monthly and Regional Board staff has been in attendance lately. The County of Los Angeles co-chairs this committee and provides administrative staff time for preparation of meeting minutes which are distributed to all interested municipal representatives. During the upcoming fiscal year the co-permittees will be involved in negotiation of the terms of next Municipal Stormwater NPDES Permit and in the development of expanded programs to comply with new permit requirements.

This subtask includes time to attend monthly EAC meetings and update City staff on time-sensitive issues that are of particular importance to the City. Negotiation of the next Municipal Stormwater NPDES Permit and development of expanded programs will involve periodic special meetings/workshops and review of documents—two such meetings are assumed during the upcoming fiscal year. An allocation of effort is also provided to review the draft Municipal Stormwater NPDES Permit and prepare a summary (approximately ten pages) for City staff. This effort including travel time will be shared among several clients.

Subtask 1.4 SMB-BC Watershed Management Committee*

The Santa Monica Bay-Ballona Creek Watershed Management Committee meets quarterly as required by the Municipal Stormwater Permit. The scope of this subtask includes representing the City at the quarterly meetings, including travel time, and providing City staff with meeting notes. This effort including travel time will be shared among several clients.

Task 2 Public Information and Participation Program (PIPP)

Each city is required to conduct educational activities within its jurisdiction, participate in Countywide events, and make outreach materials available to the general public and target audiences regarding

information on pollutants, sources of concern and related pollutant abatement measures. This scope supplements the City's baseline public outreach to residents regarding stormwater pollution prevention conducted by City staff through the environmental education booth at the annual Hometown Fair, Earth Day and other environmental outreach activities coordinated with the City's Solid Waste Diversion and Used Oil Collection outreach and education programs. It is assumed that costs for printing public education materials or purchasing premiums for distribution to the public will continue to be disbursed by the City through direct purchase orders with vendors.

Subtask 2.1 Public Education Program Implementation*

The permit requires that a representative from each Permittee attend quarterly meetings held by County public affairs staff to discuss and coordinate the County-wide Public Education Program. Time for representing the City at these meetings, including travel time will be shared among several municipal clients. This subtask also provides an allocation of time to coordinate with City staff to utilize outreach materials developed by the County of Los Angeles that address pollution prevention activities or to provide assistance in enhancing existing programs within the City.

Subtask 2.2 Pollutant-specific Targeted Outreach (TMDL Implementation)

In addition to implementing the Countywide Public Education Program under Subtask 2.1, the Municipal Stormwater Permit also requires targeted outreach focused on watershed-specific TMDL pollutants. The City's newly formed Environmental Task Force and Stormwater & Potable Water Subcommittee provides a forum for public participation in the process of developing and implementing pollutant-specific targeted outreach. This subtask provides an allocation of time to support City staff and the subcommittee in its work for up to three meetings where stormwater issues are of interest. This assumes three hours of outside preparatory work and three hours of meeting time, i.e., 6 total hours per meeting.

The programmatic solutions in the Jurisdictional Group 5 and 6 (J5&6) Implementation Plan for the Santa Monica Bay Beaches Bacteria TMDL align with this Municipal Stormwater Permit requirement and will be targeting residents, restaurants and beach/pier goers. J5&6 will be jointly contracting for consulting services to develop the programmatic solutions. An allocation of two hours per month is included in this subtask to facilitate and coordinate the implementation of J5&6 targeted programmatic solutions with City staff. It is assumed that City staff in appropriate departments would be responsible for day-to-day activities and implementation.

Subtask 2.3 Business Assistance (TMDL Implementation)

This subtask allocates time for managing and tracking the Clean Bay Restaurant certification program within the City by coordinating with the City's contract inspector, reviewing results of inspections, making recommendations for certification and coordinating with City staff and Santa Monica Bay Restoration Commission staff in issuing certificates and updating the Clean Bay Restaurant website. It is assumed that effort to update results of inspections in the inspection database will be performed by the City's contract inspector as specified in that separate contract. It is assumed that City staff will perform the distribution of certificates to restaurants. An allocation of time is also included in this task to assist City staff in melding the planned grease control ordinance with the Clean Bay Restaurant inspection program.

Task 3 Industrial/Commercial Facilities Control Program

The permit requires the implementation of an Industrial/Commercial Facilities control Program to track, inspect and ensure compliance at facilities that are critical sources of pollutants in storm water. All required inspections have been completed under the current permit; accordingly the remaining requirements are to continue to update the inventory.

This subtask allocates time to update the inventory of Industrial/Commercial facilities (excluding restaurants which are addressed under Task 2.3) based on business license data. It is assumed that City staff will provide a business license extraction of the required SIC categories in Excel-compatible format. This subtask also provides an allocation of time to assist the City in developing a scope of work and issuing a request for proposals for contractors to conduct industrial/commercial inspections within the City under the new Municipal Stormwater Permit.

Task 4 Development Planning & Construction Programs*

The Development Planning provisions of the Municipal Stormwater Permit require the City's Planning Division to ensure that development and redevelopment projects provide for permanent measures to reduce storm water pollutant loads from the development site. The Development Construction Program of the NPDES Permit tasks the Building & Safety Division with the related objective of minimizing pollutant loads from development and redevelopment sites during construction.

Most of the day-to-day and project-by-project effort for compliance with the Development Planning and Construction Program under the Municipal Stormwater Permit resides with the City Planning, Engineering and Building & Safety staff through their review of new development/redevelopment projects, issuance of building and grading permits and inspection of construction sites during construction and upon project completion. Up to eight (8) hours is allocated in this task to provide on-call consulting support to City staff in implementing the program.

This task also provides for development and delivery of the required annual training of the Community Development Department staff in the permit provisions. Training during this fiscal year will focus on familiarizing staff with new permit provisions and their integration with green building and low impact development initiatives as well as a refresher of ongoing requirements. New permit provisions may require development of a system for tracking structural BMP installation and maintenance on private properties within the City, however it is assumed that actual implementation of such a tracking program would not begin until FY2010-11. In addition, a revision of the statewide general construction permit is anticipated to have similar though possibly conflicting requirements with the Municipal Stormwater Permit and those issues will also be covered in the training. The format of the training will include Power Point® presentation with handouts as well as round-table discussions to actively engage staff. A single two-hour training session is assumed for both planning and building & safety staffs with allowance for adequate preparation time for visual presentation and handouts. Time for preparing training materials and preparing presentations will be partly shared with other municipal clients.

Task 5 Public Agency Activities Program

The Public Agency Activities program focuses primarily on the activities of the Public Works Department and requires implementation of Best Management Practices (BMPs) to minimize water quality impacts. Public Works projects are subject to the same development planning and construction

requirements under the Municipal Stormwater NPDES Permit as private projects and are required to obtain coverage under the Statewide General Construction Activities Stormwater NPDES permit for projects disturbing one or more acres of land area. Appropriate Best Management Practices (BMPs) must be implemented for all manner of public works activities conducted in exposure to storm water. Most of the day-to-day effort for compliance with the Public Agency Activities Program under the Municipal Stormwater Permit resides with City staff through activities such as street sweeping, catch basin stenciling and cleaning, and capital improvement projects. Up to eight (4) hours is allocated in this task to provide on-call consulting support to City staff in implementing the program.

The Municipal Stormwater Permit requires that public works employees receive annual training in how to conduct their responsibilities in a manner that minimizes adverse impacts on water quality. This subtask provides for conducting two one-hour training sessions with Public Works Division. Each training session will provide an overview of the new Municipal Stormwater Permit and focused training on stormwater best management practices (BMPs) related to the specific activities conducted by Public Works staff. The format of the training will include Power Point® presentation with handouts as well as round-table discussions to actively engage staff. The training will be focus on changes in requirements of the new 4th term Municipal Stormwater NPDES Permit as well as a review of continuing requirements. Time for preparing training materials and preparing presentations will be partly shared with other municipal clients.

Task 6 Illicit Connection & Illicit Discharge Elimination*

The Municipal Stormwater Permit requires that municipal employees receive annual training in how to conduct their responsibilities in a manner that minimizes adverse impacts on water quality. This subtask provides for conducting two one-hour training sessions with Police/Fire staff responsible for responding to and reporting illicit discharges. Each training session will provide an overview of the new Municipal Stormwater Permit and focused training on prohibited discharges and TMDL compliance. The format of the training will include Power Point® presentation. Time for preparing training materials and preparing presentations will be partly shared with other municipal clients.

Day-to-day responsibility for identifying, responding to and keeping records of illicit discharges and illegal connections lies with the City Public Works staff. City staff are also responsible for preparing GIS shape files to be submitted to the County of Los Angeles for trend analysis. This subtask allocates up to four hours of time to provide regulatory advice in support of code enforcement/inspection activities in response to discovery of illicit connections or illicit.

Task 7 Santa Monica Bay Beaches Bacteria TMDL Implementation

Jurisdictional Group 5 & 6 (J5&6) agencies are moving forward with carrying out the TMDL Implementation Plan through a combination of joint and individual activities.

Subtask 7.1 SMBBB TMDL Jurisdictional Group 5 & 6 Planning*

Jurisdictional Group 5&6 agencies meet on a monthly basis to coordinate compliance monitoring and implementation activities under the Santa Monica Bay Beaches Bacteria TMDL. This task includes time to represent the City at monthly two-hour J5&6 meetings, review and comment on documents submitted by subcontractors under J5&6 jointly implemented scopes of work, and to solicit City staff input and contribute on the City's behalf as needed to the implementation planning process. Time for attending these meetings will be shared with one other J5&6 municipal client.

Subtask 7.2 SMBBB TMDL Implementation Support

This subtask provides an allocation of time to coordinate and provide information needed by J5&6 jointly-contracted consultants in carrying out the structural BMP Siting and Source Identification and Control scope of work under the J5&6 Implementation Plan. Parallel effort for the programmatic solutions is shown under Subtasks 2.2 and 2.3 to allow tracking of compliance costs in accordance with annual reporting categories. It is assumed that City staff will be responsible for providing the information in the format required by the J5&6 consultants, e.g., GIS shape files of land use maps, or storm drain maps, etc.

Subtask 7.3 SMBBB TMDL Compliance Monitoring Response

This subtask provides for review of daily and weekly Bacteria TMDL shoreline monitoring reports and advising City staff regarding compliance status and locations of concern. This effort does not include preparing a response to unpredictable enforcement action issued by the Los Angeles Regional Water Quality Control Board.

Task 8 Grant Proposals and Tracking

The State Water Resources Control Board makes available to municipalities competitive grant opportunities for implementation of projects to assist in meeting Total Maximum Daily Loads for impaired water bodies.

Subtask 8.1 Grant Concept Proposal

City staff has expressed interest in pursuing additional State grant funding opportunities for design and construction of structural BMPs to address Bacteria TMDL compliance. This task provides sixty (60) hours of time to prepare and submit a concept proposal under one of the Prop 84 funding categories for design and construction of a structural BMP project arising from the J5&6 Structural BMP Siting study within the City of Manhattan Beach.

Subtask 8.2 Integrated Regional Water Management Plan (Prop 84)*

This task includes time for attending the monthly South Bay Integrated Water Resources Management Plan (IRWMP) Steering Committee meetings in order to participate in the planning process and to align the City's grant projects for possible funding opportunities. Time including travel for attending these meetings will be shared with several other municipal clients.

Subtask 8.3 Grant Agreement Assistance (optional)

In the event that the City's Greenbelt Low Flow Infiltration project is selected for grant funding, City Engineering staff may require assistance in meeting the requirements for executing a grant agreement. At the City's option, this subtask provides an allocation of up to 36 hours to assist City Engineering staff in fulfilling requirements needed for a grant agreement. It is possible that these costs can be allocated to the City's match for the grant along with City Engineering staff planning and design in-kind services. This subtask does not include time to assist City staff with Grant Management or Monitoring work subsequent to executing a grant agreement as such costs will be reimbursable under the grant and should be handled under a separate purchase order agreement or professional services agreement to facilitate grant funds tracking.

COST PROPOSAL

I will conduct the work effort described in the above Scope of Work for an amount **not to exceed \$54,625** *without optional subtask 8.3* or for an amount **not to exceed \$60,404** *including optional subtask 8.3* including labor and expenses as described in the attached Cost Breakdown table. In consideration of the difficult fiscal climate, I will conduct work for all tasks based on actual time expended at my current FY 2008-09 rates for municipal work (with no escalation) and with direct expenses billed at cost without markup. My invoices are detailed and provide explanation for level-of-effort expended. I am confident that the City will continue to find my services to be of the highest caliber and an outstanding value for services rendered.

It is the nature of regulatory-driven programs to be subject to variation due to changes in regulatory requirements and emerging issues; the March 4, 2008 Notices of Violation and Order from the Regional Board are a case in point. So despite the care taken in preparing the Scope of Work and Cost Proposal, issues may arise during the course of the year that were not anticipated and could require a change in level-of-effort. I will closely monitor and inform the City of changing requirements and emerging issues as part of regular communication with City staff, and will notify the City in advance if I anticipate that such changes could necessitate a concomitant adjustment in the scope of services.

Please don't hesitate to contact me if you have any questions or require additional clarification. It is a privilege to work with you and the staff at the City of Manhattan Beach.

Yours truly,

Kathleen C. McGowan, P.E.

Attachments:

Cost Breakdown Table
Current Rate Sheet

Cost Breakdown

Description		FY 09/10
Task 1 NPDES Program Management	Hours	Cost
1.1 Internal Coordination	36	\$4,140
1.2 NPDES Annual Report & Budget Summary	50	\$5,750
1.3 Executive Advisory Committee & General Permittee Meetings*	36	\$4,140
1.4 SMB-BC Watershed Management Committee*	10	\$1,150
Total Task 1:	132	\$15,180
Task 2 Public Information and Participation Program (PIPP)	Hours	Cost
2.1 Public Education Program Implementation*	20	\$2,300
2.2 Pollutant-Specific Targeted Outreach	48	\$5,520
2.3 Business Assistance (TMDL Implementation)	41	\$4,715
Total Task 2	109	\$12,535
Task 3 Industrial/Commercial Facilities Control Program	Hours	Cost
3.1 Update Inventory of Industrial/Commercial Facilities.	12	\$1,380
Total Task 3	12	\$1,380
Task 4 Development Planning & Construction Programs	Hours	Cost
4.1 Annual Training *	24	\$2,760
Total Task 4	24	\$2,760
Task 5 Public Agency Activities Program	Hours	Cost
5.1 Public Works/Maintenance Staff Training & Support*	18	\$2,070
Total Task 5	18	\$2,070
Task 6 – Illicit Connection & Illicit Discharge Elimination	Hours	Cost
6.1 Regulatory/Technical Support for IC/ID	12	\$1,380
Total Task 6	12	\$1,380
Task 7 – SMBBB TMDL Implementation	Hours	Cost
7.1 Jurisdictional Group 5&6 Planning*	48	\$5,520
7.2 Implementation Support	18	\$2,070
7.3 Compliance Monitoring Response*	30	\$3,450
Total Task 7	96	\$11,040
Task 8 – Grant Proposal and Tracking	Hours	Cost
8.1 Grant Concept Proposal	54	\$6,210
8.2 IRWMP Participation*	18	\$2,070
8.3 Grant Agreement Assistance (optional)	36	\$4,140
Total Task 8	108	\$12,420

Cost Breakdown

Description		FY 09/10
Tasks 1 through 8 NPDES & TMDL Program Costs w/o optional subtask	Hours	Cost
Subtotal Labor	475	\$54,625
Direct Expenses estimated @3% of Labor		\$1,639
Subtotal NPDES and TMDL Consulting Services		\$56,264
NPDES and TMDL Consulting Services including optional subtask 8.3	511	\$60,404

* = Cost savings for shared costs

Standard Rates for Kathleen McGowan, P.E.

FY 2008-2009¹

Kathleen McGowan--Professional Labor^{*}

Municipal Contracts ongoing	\$115 per hour
Short-term consulting	\$130 per hour

Support Services

Graphic artist	\$60 per hour
Technical Editor/Writer	\$60 per hour
Intern	\$20 per hour

Expenses

Direct costs include: copying, report reproduction and binding, blueprint services, graphics services, film and film development, mileage, travel expenses, project-specific publications, and any other direct project costs not included in the labor rates.

¹ Labor rates to be adjusted annually based on increases in the Consumer Price Index for the Los Angeles area as calculated by the U.S. Department of Labor Bureau of Labor Statistics

^{*} Labor charges include telephone, fax, computer, ink-jet printing, and labor overhead

AGREEMENT

THIS AGREEMENT is made this 1st day of July, 2009, by the CITY OF MANHATTAN BEACH, a municipal corporation, ("CITY"), and Kathleen McGowan, P.E. ("CONTRACTOR").

RECITALS

The following recitals are a substantive part of this Agreement:

1. City is desirous of obtaining services necessary to manage its NPDES Municipal Stormwater Permit compliance and compliance with TMDL requirements with regard to the City's stormwater system;
2. CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish these services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement shall terminate on June 30, 2010, unless earlier terminated as provided below.

1.1 **Termination.** CITY and CONTRACTOR shall have the right to terminate this Agreement, without cause, by giving fifteen (15) days written notice. Upon receipt of a termination notice, CONTRACTOR shall:

- (1) promptly discontinue all services affected (unless the notice directs otherwise); and
- (2) promptly deliver all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in performing the Agreement to CITY, whether completed or in progress. CONTRACTOR shall be entitled to reasonable compensation for the services it performs up to the date of termination.

2. **Services to be Provided.** The services to be provided hereunder shall be those set forth in the "Scope of Work" section of Exhibit "A," CONTRACTOR's proposal which is attached hereto and incorporated herein by this reference.

3. **Compensation.** CONTRACTOR shall be compensated as follows:

3.1 **Amount.** Compensation under this Agreement shall not exceed sixty thousand four hundred and four dollars (\$60,404) including optional subtask 8.3 as listed in CONTRACTOR's Scope of Work in Exhibit "A." CONTRACTOR's billing shall be based on actual time expended using the Cost Breakdown in Exhibit "A."

3.2 **Payment.** For work under this Agreement, payment shall be made per monthly invoice. For extra work not a part of this Agreement, written authorization by CITY will be required.

3.3 **Expenses.** CONTRACTOR shall not be entitled to any additional compensation for expenses.

3.3 **Expenses.** In addition, CONTRACTOR shall be reimbursed for costs advanced by CONTRACTOR on behalf of CITY, including delivery and messenger services, printing, copying and binding costs and out-of-state travel expenses in an amount to be approved in advance by CITY. CONTRACTOR shall keep accurate records of all expenses. Out-of-state travel expense by CONTRACTOR shall only be paid by the CITY if approved in writing prior to the incursion of said expenses. CITY shall not pay for CONTRACTOR's in-state travel expenses. Records must be submitted to CITY along with any invoice which requests payment for the foregoing expenses.

4. **Professional Standards.** CONTRACTOR shall maintain or exceed the level of competency presently maintained by other similar practitioners in the State of California, for professional and technical soundness, accuracy and adequacy of all work, advice, and materials furnished under this Agreement.

5. **Time of Performance.** CONTRACTOR shall complete all services required hereunder as and when directed by CITY. However, CITY in its sole discretion, may extend the time for performance of any service.

6. **Employees and Subcontractors.** CONTRACTOR may, at CONTRACTOR'S sole cost and expense, employ such other person(s) as may, in the opinion of CONTRACTOR, be needed to comply with the terms of this Agreement, if such person(s) possess(es) the necessary qualifications to perform such services. If such person(s) is/are employed to perform a portion of the scope of work, the engagement of such person(s) shall be subject to the prior approval of the CITY.

7. **Insurance Requirements.**

7.1 **Commencement of Work.** CONTRACTOR shall not commence work under this Agreement until it has obtained CITY approved insurance. Before beginning work hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, CONTRACTOR must have and maintain in place, all of the insurance coverages required in this Section 7. CONTRACTOR'S insurance shall comply with all items specified by this Agreement. Any subcontractors shall be subject to all of the requirements of this Section 7 and CONTRACTOR shall be responsible to obtain evidence of insurance from each subcontractor and provide it to CITY before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

7.2 **Coverages, Limits and Policy Requirements.** CONTRACTOR shall maintain the types of coverages and limits indicated below:

(1) **COMMERCIAL GENERAL LIABILITY INSURANCE** - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, with no special limitations affecting CITY. The limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an

“other insurance” clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) **COMMERCIAL AUTO LIABILITY INSURANCE** - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, including Symbol 1 (any auto) with no special limitations affecting the CITY. The limit for bodily injury and property damage liability shall be no less than one million dollars (\$1,000,000) per accident. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an “other insurance” clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto) must be executed by the applicable insurance underwriters.

(3) **WORKERS’ COMPENSATION INSURANCE** - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of CITY.

(4). **PROFESSIONAL ERRORS & OMISSIONS** - a policy with minimum limits of five million dollars (\$5,000,000) per claim and aggregate. This policy shall be issued by an insurance company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to CITY.

7.3 Additional Requirements. The procuring of such required policies of insurance shall not be construed to limit CONTRACTOR’S liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against CITY for payment

of premiums or other amounts with respect thereto. CITY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable insurance policies with CITY incorporating such changes within sixty (60) days of receipt of such notice, CONTRACTOR shall be deemed in default hereunder.

Any deductibles or self-insured retentions must be declared to and approved by CITY. Any deductible exceeding an amount acceptable to CITY shall be subject to the following changes:

- (1) either the insurer shall eliminate, or reduce, such deductibles or self-insured retentions with respect to CITY and its officials, employees and agents (with additional premium, if any, to be paid by CONTRACTOR) ; or
- (2) CONTRACTOR shall provide satisfactory financial guarantee for payment of losses and related investigations, claim administration, and defense expenses.

7.4 Verification of Compliance. CONTRACTOR shall furnish CITY with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, CONTRACTOR shall deliver to CITY a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefore, or accompanied by other proof of payment satisfactory to CITY.

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor.** It is agreed that CONTRACTOR shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.

11. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

12. **Ownership of Work Product.** All documents or other information created, developed or received by CONTRACTOR shall, for purposes of copyright law, be deemed works made for hire for CITY by CONTRACTOR as CITY'S employee(s) for hire and shall be the sole property of CITY. CONTRACTOR shall provide CITY with copies of these items upon demand and in any event, upon termination or expiration of the term of this Agreement.

13. **Conflict of Interest and Reporting.** CONTRACTOR shall at all times avoid conflict of interest, or appearance of conflict of interest, in performance of this Agreement.

14. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.

a. Address of CONTRACTOR is as follows:

Kathleen McGowan, P.E.
25 Rollingwood Drive
RHE, CA 9027

b. Address of CITY is as follows:

Director of Public Works
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

(with a copy to):

City Attorney
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach, CA 90266

15. **Contractor's Proposal.** This Agreement shall include CONTRACTOR'S proposal or bid attached hereto as Exhibit "A" which is incorporated herein by this reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

16. **Licenses, Permits, and Fees.** CONTRACTOR shall obtain a Manhattan Beach Business License, all permits, and licenses as may be required by this Agreement.

17. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that:

- (1) she has investigated the work to be performed;
- (2) she has investigated the site of the work and is aware of all conditions there; and
- (3) she understands the difficulties and restrictions of the work under this Agreement. Should CONTRACTOR discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONTRACTOR's risk, until written instructions are received from CITY.

18. **Time of Essence.** Time is of the essence in the performance of this Agreement.

19. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement, or any portion, shall be assigned by CONTRACTOR without prior written consent of CITY.

20. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

21. **Indemnification.** CONTRACTOR agrees to indemnify, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractor(s) hired by CONTRACTOR. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

22. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises, other than those included in this Agreement, shall be valid. This Agreement may be modified only by a written agreement executed by CITY and CONTRACTOR.

23. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Municipal or Superior Court.

24. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

25. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

26. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representations by any party not embodied herein, and any other agreements, statements, or promises concerning the subject matter of this Agreement, not contained in this Agreement, shall not be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties. Any issue with respect to the interpretation or construction of this Agreement are to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

27. **Attorneys' Fees.** In the event that legal action is necessary to enforce the provisions of the Agreement, or to declare the rights of the parties hereunder, the parties agree that the prevailing party in the legal action shall be entitled to recover attorneys' fees and court costs from the opposing party.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first shown above.

CONTRACTOR

Kathleen McGowan, P.E.

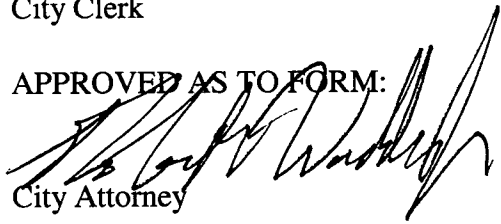
CITY OF MANHATTAN BEACH

By _____

ATTEST:

City Clerk

APPROVED AS TO FORM:


City Attorney