



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Ward and Members of the City Council

THROUGH: Richard Thompson, Interim City Manager

FROM: Jim Arndt, Public Works Director

DATE: July 20, 2010

SUBJECT: Consideration to Approve Award of 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 \$59,338 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 2010-2011 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 in the near future.

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 four 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 2009-10 rate and recommending a minor decrease in total hours over the previous year to support the City in additional Bacteria TMDL implementation efforts. Excluding optional Subtask 8.2 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 \$4,140 less than FY 2009-10.

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.

- Attachments:
1. FY 10-11 Proposal for Municipal Stormwater NPDES Permit and TMDL Consulting
 2. Professional Services Agreement with Kathleen McGowan

KATHLEEN MCGOWAN, P.E.
Environmental Engineer

April 30, 2010

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

RE: *FY 10-11 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 (MS4 Permit) and in undertaking compliance with Total Maximum Daily Loads for Santa Monica Bay.

Scope of Work

This proposal provides a scope of work for the fiscal year period from July 1, 2010 to June 30, 2011 that will continue the City through the post-third term NPDES MS4 permit period. The MS4 permit compliance efforts in this work plan are focused on maintaining the City's current programs as defined under the expired third-term permit, providing ongoing training and support for City staff, and providing review and comment as needed on proposed drafts of the next permit. It is assumed that implementation of significantly expanded or new programs under the next permit will not begin until FY 11-12.

Scope of TMDL tasks are based on continued implementation and compliance with Santa Monica Bay Beaches Bacteria TMDLs in collaboration with the other Jurisdictional Groups 5&6 responsible agencies, and for tracking and commenting upon additional TMDLs being developed by USEPA or the Los Angeles Regional Water Quality Control Board.

As you are aware, I consult for several municipal clients and when possible I distribute my level-of-effort among those clients thereby reducing individual costs to each client. Subtasks where I have assumed cost-sharing are identified with an asterisk (*) and the level-of-effort described represents the City's share of that effort.

Task 1 NPDES Program Management

The MS4 Permit affects a wide range of municipal activities and requires effective management and coordination of MS4 Permit activities across municipal departments. 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 task will include working with City staff to prepare the annual budget summary for the annual report. Based on City staff review and comment, the annual report will be finalized and the various final report elements will be uploaded to the County for compilation with other municipal reports to the Regional Board. A bound copy of the annual report including all elements uploaded for submittal to the Regional Board will be provided for the City's records.

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 MS4 Permittees to discuss and coordinate response to issues among the Principal Permittee and Co-Permittees across all areas of the MS4 Permit. The EAC meets monthly. The County of Los Angeles and a second municipality co-chair this committee and provide 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 the next MS4 Permit.

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. An allocation of effort is provided to review the draft LA County MS4 Permit and prepare a summary 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 MS4 Permit. Minutes are provided by the designated secretary of the committee. The City of Manhattan Beach has been hosting the meetings and serves as one of two EAC representatives from the watershed. The scope of this subtask includes representing the City at the quarterly meetings, travel time, and providing City staff with updates on time-sensitive issues. Additional effort is associated with serving as the Watershed representative to the Technical Advisory Committee for the County Watershed Management Modeling System which is also distributed 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 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 MS4 permit also requires targeted outreach focused on watershed-specific TMDL pollutants. 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 MS4 Permit requirement and will be targeting residents, restaurants and beach/pier goers. J5&6 has been jointly contracting for consulting services to develop the programmatic solutions. An allocation of twenty-four (24) hours of support is included in this subtask for facilitating the implementation of J5&6 targeted programmatic activities.

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, obtaining and providing storm drain stencils to restaurants that need them, making recommendations for certification, printing certificates with proper expiration dates, 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 prepare the mailings for the distribution of certificates to restaurants.

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 and inspect new facilities as necessary.

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 conduct inspections of up to six (6) new facilities per year as identified in the business license update.

Task 4 Development Planning & Construction Programs*

The Development Planning provisions of the Municipal Stormwater Permit require the City's Community Development Department 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.

Subtask 4.1 Annual Training & Support

This task provides for conducting the required annual training of the Community Development Department staff in the MS4 Permit provisions applicable to new development, redevelopment and construction. Training during this fiscal year will focus on familiarizing staff with the new Statewide General Construction Activities Stormwater NPDES permit which goes into effect July 1, 2010 and green building and low impact development initiatives as well as a refresher of ongoing requirements. 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.

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 Community Development 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. 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 FY2011-12.

Subtask 4.2 Low Impact Development

The Green Building subcommittee of the City's Environmental Task Force has recommended to City Council the establishment of low impact development requirements for all new development and redevelopment in the City regardless of size, which requirement would go beyond the current requirements in the MS4 Permit. These low impact development requirements are to be codified in an ordinance that is integrated with the required elements of the existing and anticipated MS4 Permit requirements as part of a green building program to achieve additional water quality benefits by retaining and infiltrating or beneficially using stormwater runoff either through on-site site measures or through a mitigation fee to support the City's subregional stormwater mitigation projects which achieve the same or better stormwater runoff reduction. This subtask allocates up to 36 hours of time to work with Community Development staff and Public Works staff to develop such an ordinance, which includes time to prepare for and attend a planning commission and City Council meeting on the item.

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 four (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 within the Public Works Division and also including the Community Service Officers who assist in issuing citations for stormwater discharge violations. Training will provide an overview of the new Construction 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*

Day-to-day responsibility for identifying, responding to and keeping records of illicit discharges and illegal connections lies with the City Public Works staff and the Community Service Officers. City staff is also responsible for preparing GIS shape files to be submitted to the County of Los Angeles for trend analysis. This subtask allocates up to eight (8) hours of time to provide regulatory advice in support of code enforcement/inspection activities in response to discovery of illicit discharges and illicit connections as well as tracking and coordinating the documentation of these incidents for purpose of annual reporting.

Task 7 TMDL Compliance and Implementation

The City of Manhattan Beach is currently subject to Total Maximum Daily Loads (TMDLs) for Santa Monica Bay Beaches Bacteria and there is a TMDL pending for Marine Debris (trash), and Dominguez Channel toxics. Additional TMDLs for DDT, PCBs and sediment toxicity for near shore and offshore areas of Santa Monica Bay, as well as ammonia and bacteria impairment listings for Dominguez Channel are being deferred until 2012.

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 SMBBB TMDL. This task includes time to prepare for and attend the meetings, review and comment on documents and work product under J5&6 jointly implemented scopes of work. Time for attending J5&6 meetings will be shared with one other J5&6 city client.

Subtask 7.2 SMBBB TMDL Implementation Support

This task allocates twelve (18) hours to coordinate the City's individual activities associated with TMDL implementation over and above the public outreach activities conducted under Task 2 and separate from joint activities undertaken under subtask 7.1. Examples of such activities could include development of

a new ordinance for source control or assisting City engineering staff in preparing a prioritization for the installation of full capture devices for trash.

Subtask 7.3 SMBBB TMDL Compliance Monitoring Response*

The City of Manhattan Beach from time-to-time is required to respond to informational requests from the Los Angeles Regional Water Quality Control Board regarding occasional exceedances of dry weather TMDL targets at shoreline monitoring locations along the City's beaches. Twelve (12) hours of time is allocated to review daily and weekly monitoring reports and to advise City staff regarding compliance status. This subtask does not allocate time to respond to further enforcement actions issued by the Los Angeles Regional Water Quality Control Board.

It is anticipated that the Los Angeles Regional Water Quality Control Board will be reconsidering waste load allocations under the Santa Monica Bay Beaches Bacteria TMDL. This subtask allocates an additional twenty-four (24) hours of time to prepare comments for and attend hearings and workshops related to the TMDL reconsideration which effort will be combined with that for three other municipal clients.

Subtask 7.4 New TMDL Tracking, Review & Comment

The Los Angeles Regional Water Quality Control Board will be issuing a proposed amendment to the Los Angeles Basin Plan to incorporate a Total Maximum Daily Load for Marine Debris which is anticipated to apply waste load allocations to the City of Manhattan Beach for the MS4 system. In addition, TMDLs for the Dominguez Channel toxics are expected to be proposed during the summer of 2010. This subtask allocates up to thirty six (36) hours to prepare comments or conduct other preliminary activities related to tracking and commenting on proposed TMDLs.

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 Proposal and Tracking

City staff has expressed interest in pursuing grant funding opportunities for design and construction of structural BMPs to address Bacteria TMDL compliance. This task provides fifty-four (54) hours of time to track, 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 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 informational submittals required to execute 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 \$55,198** including labor and expenses *excluding optional subtask 8.2*, or for an amount **not to exceed \$59,338 including optional subtask 8.2** as described in the attached Cost Breakdown table. In consideration of the difficult fiscal climate, I am holding labor rates flat for the second year in a row and will conduct work for all tasks based on actual time expended at the attached FY 2010-11 rates for ongoing municipal contracts. Direct expenses will be billed at cost without markup.

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

AGREEMENT

THIS AGREEMENT is made this 1st day of July 2010, 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, 2011, 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 “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 fifty nine thousand three hundred and thirty eight dollars (\$59,338) including optional subtask 8.2 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 90274

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 which is incorporated herein. 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, nor 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 is 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